Precedent thoroughly defines the availability of the discretionary function exception to government employees and what government actions it protects. When applicable, these exceptions should offer security to government employees in an unambiguous fashion that ensures certain tort claims will not impair government functions. *See Dalehite v. United States*, 346 U.S. 15, 32 (1953). However, some of the Section 2680 exceptions are not as well-defined as the discretionary function exception, particularly the Treasury exception.

II. Defining the Section 2680(i) Treasury Exception

Section 2680(i), also referred to as the Treasury exception, states that sovereign immunity is not waived over "[a]ny claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system." 28 U.S.C. § 2680(i). Only two cases detail the extent to which this exception applies. In *Forrester v. United States Gov't*, 443 F. Supp. 115 (S.D.N.Y. 1977), a suit was filed against the Deputy Director of the Office of Domestic Gold and Silver Operations seeking money damages because they had prevented the plaintiff from establishing a foreign gold trust that would allow his clients to acquire beneficial interests. The court in *Forrester* dismissed the plaintiff's complaint, ruling the issues as moot, but noted that the claim would have been legally insufficient on its face anyway because Sections 2680(h) and (i) of the FTCA barred these claims. *Id.* at 118. Section 2680(i) was applicable in *Forrester* because the plaintiff sought money damages from a regulation imposed by the Office of Domestic Gold and Silver Operations, which was a branch of the Treasury Department. *Id.* Another landmark case for Section 2680(i) is *In re Franklin Nat. Bank Sec. Litig.*, 445 F. Supp. 723 (E.D.N.Y. 1978). This case limited Section 2680(i)'s scope when the court ruled that "the 'monetary system' exception contained in [§] 2680(i) does not apply to bank examinations or regulation of banks in

general," making the Treasury the main beneficiary of the exception's protections. *Id.* at 734. These cases establish Section 2680(i) as a protector of the Treasury.

The relationship between Section 2680(i) and the Treasury is well-defined, yet the full breadth of Section 2680(i)'s scope and terminology, including what constitutes "fiscal operations" and "the regulation of the monetary system," are not defined at all. Although it is mainly used in conjunction with other exceptions, courts must define Section 2680(i) on its own; they cannot assume that this exception nor the language it uses is superfluous. *See Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) (noting that courts must avoid interpreting portions of a statute as superfluous and must give effect to every word Congress used). Understanding the scope of these exceptions to the same level as the discretionary function exception is important because Section 2680 "marks the boundary between Congress' willingness to impose tort liability upon the United States and its desire to protect certain governmental activities from exposure to suit by private individuals." *Varig Airlines*, 467 U.S. at 808. The "moat of sovereign immunity" protects the United States from suit, but better defining the boundaries of the FTCA benefits the United States as a potential party to a suit and provides a "traversable bridge" for individuals looking for redress for of acts of negligence caused by federal actors. *Jaffe v. United States*, 592 F.2d 712, 717 (3d Cir. 1979).

a. Recent Developments in the Interpretation of the Treasury Exception

A slew of recent cases in the United States District Court for the Southern District of Texas have more clearly defined Section 2680(i) by interpreting a different FTCA exception. When a quarantine was issued in South Texas to prevent the spread of fever ticks amongst cattle, plaintiffs filed suit against the U.S. Department of Agriculture for the harm their livestock sustained from the government-issued treatment for ticks the cattle received during their

quarantine. *See Delgadillo v. United States*, No. CV B-17-59, 2018 WL 5732080 (S.D. Tex. Sept. 5, 2018); *Ramirez v. United States*, No. CV B-17-60, 2018 WL 5732082 (S.D. Tex. Sept. 5, 2018); *Cascabel Cattle Co., LLC v. United States*, No. CV B-17-61, 2018 WL 5850575 (S.D. Tex. Sept. 5, 2018). The defendant in these suits moved to dismiss the claims under Section 2680(f) of the FTCA, also known as the quarantine exception, which states that the FTCA does not waive sovereign immunity for "[a]ny claim for damages caused by the imposition or establishment of a quarantine by the United States." *Delgadillo*, 2018 WL 5732080, at *8; *Ramirez*, 2018 WL 5732082, at *1; *Cascabel Cattle Co., LLC*, 2018 WL 5850575, at *1. The court in these cases noted that both the quarantine exception and the Treasury exception use "caused by" language versus "arising out of" language seen in the other FTCA exceptions. *Delgadillo*, 2018 WL 5732080, at *11; *Cascabel Cattle Co., LLC*, 2018 WL 5850575, at *13. Based on previous interpretations of the language and statutory intent, the United States District Court for the Southern District of Texas determined that the phrase "caused by" implied that proximate causation was necessary for the exceptions to apply. *Delgadillo*, 2018 WL 5732080, at *11; *Cascabel Cattle Co., LLC*, 2018 WL 5850575, at *13. This interpretation was reaffirmed by the Fifth Circuit Court of Appeals. *See Cascabel Cattle Co., LLC v. United States*, 955 F.3d 445, 451–53 (5th Cir. 2020) (holding that quarantine exception barred plaintiff's claim after defining scope of exception through use of statutory intent, ordinary meaning, and precedent).

The proximate causation requirement in the quarantine exception and Treasury exception is satisfied when it is determined that a reasonable person could have foreseen the harm alleged by the plaintiff occurring. *See id.* In the context of the quarantine exception, the "caused by" language specifically means, "the quarantine exception applies when a plaintiff's damages are *reasonably foreseeable* based on the government's decision to establish a quarantine or the

government's actions imposing the quarantine." *Id.* at 451–52 (emphasis added). In *Cascabel Cattle Co., LLC*, the quarantine exception applied because the government treated the cattle with an unknowingly lethal treatment to enforce their quarantine, and hence the damages sued for were directly caused by the implementation of the quarantine. *Id.* at 452. For the Treasury exception, the court's interpretation means that the exception applies only when it is reasonably foreseeable that the Treasury's actions led to the damages the plaintiff suffered. *See id.* These recent cases state that proximate causation is a requirement for the Treasury exception and helps courts better determine when the exception can be applied.

CONCLUSION

The Treasury exception protects the acts of the Treasury. While the specific acts the exception is supposed to protect are not definite, statutory interpretation has led courts to discover a proximate causation requirement hidden in the exception's "caused by" language. Courts and legislative bodies should continue to take active measures to better define the Treasury exception and the FTCA's countless other exceptions.

Applicant Details

First Name	**Jonathan**
Last Name	**Marinelli**
Citizenship Status	**U. S. Citizen**
Email Address	**jonjmarinelli@gmail.com**
Address	**Address** Street **305 Taunton St.** City **Wrentham** State/Territory **Massachusetts** Zip **02093** Country **United States**
Contact Phone Number	**5089189365**

Applicant Education

BA/BS From	**Dartmouth College**
Date of BA/BS	**June 2016**
JD/LLB From	**University of Massachusetts School of Law-Dartmouth**
Date of JD/LLB	**May 10, 2022**
Class Rank	**School does not rank**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**No**

Bar Admission

Admission(s)	**Massachusetts**

Prior Judicial Experience

Judicial Internships/Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Rudko, Frances
frudko@umassd.edu
5089851144
McCuskey, Elizabeth
emccuskey@umassd.edu
508-985-1145
Connelly, Kevin
kconnelly@umassd.edu
508-525-5272

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Judge Walker,

It is with enthusiasm that I am submitting my application for a term law clerk position with your chambers. No single reason has prompted me to apply. Rather, it has been through personal reflection and consistent exposure to the workings of the federal judiciary that I find myself drawn to this opportunity.

Throughout my legal studies, I effectively balanced and furthered my full-time, professional career in corporate consulting while excelling in my part-time studies as a law student. In addition to the required legal skills courses that provided me with a foundational understanding of legal writing and analysis, three academic-year internships with separate federal agencies during my time in law school allowed me to hone my research skills and cemented my desire to work on complex issues and in public service.

Most valuable to my professional development thus far has been the experience that my current position as a full-time, federally contracted law clerk with the U.S. Attorney's Office in Boston has afforded me. Through that position, which I have held since graduating law school in May of 2022, I have been exposed to various legal issues across both the criminal and civil landscapes and demanding deadlines. In this role, I have tried to observe as many federal court proceedings as possible. Through observing a variety of these proceedings, I have come to both appreciate and respect the significance and the importance of the U.S. District Court and the vibrancy of its halls.

I recognize the fundamental services that a District Court offers to the pro se plaintiff and the experienced litigant, alike. In working as a judicial law clerk, I would hope to contribute to your chambers through the limited, yet diverse set of experiences that I have garnered as a part-time law student, an employee of a private consulting firm, and a law clerk for a federal agency.

I have no reservations that serving as a law clerk with your chambers would provide foundational legal instruction and be an incredibly rewarding, collaborative, and collegial experience.

Respectfully,

Jonathan T. Marinelli

Jonathan T. Marinelli

Contact | 1(508) 918-9365 | jonjmarinelli@gmail.com

Highly-motivated, Hard-working, and Enthusiastic

Education

+ *University of Massachusetts Law School* | Dartmouth, MA | August 2018 - May 2022
  + J.D. Graduate, May 2022 | Admitted to the Massachusetts Bar, November 2022
  + Full-Tuition Merit Scholarship Recipient | GPA: 3.74 | *Magna Cum Laude* | Top 10% Class Ranking
  + Attended on a part-time basis while working in a professional, full-time job
+ *Dartmouth College* | Hanover, NH | June 2016
  + B.A. in History / War and Peace Studies
  + War and Peace Fellow

Professional Experience

+ *United States Attorney's Office, District of Massachusetts* | Boston, MA | May 2022 - Present

  Career Law Clerk Employed by FSA Federal and Embedded with the USAO Boston
  + Worked alongside various Assistant U.S. Attorney's in the Asset Recovery Unit to actively assist in criminal and civil litigation by drafting motions and helping craft legal arguments
  + Engaged in lengthy end-to-end legal research and writing
  + Actively managed and prioritized competing and shifting deadlines in order to accommodate the needs of the office and a demanding docket of roughly 60-80 matters at a given time

+ *Bristol County District Attorney's Office* | Taunton, MA | September 2021 - February 2022

  SJC Rule 3:03 Law Student Prosecutor, Taunton District Court, MA
  + Appeared before various judges of the Taunton District Court, representing the Commonwealth of Massachusetts on matters including Bail Warnings, Bail Hearings, and other official proceedings while learning courtroom decorum, drafting motions in limine, and becoming familiar with the inner-workings of a District Attorney's office

+ *LifeWorks* (formerly Mercer LLC) | Norwood, MA | April 2017 - May 2022

  Senior Client Services / Data Analyst - Health and Benefits
  + Served as a subject matter expert and technical systems resource through the daily administration of processes, case management, and project work and worked to elevate my primary client, The Children's Hospital of Philadelphia, to the highest client-designated service rating of Platinum as Lead, Senior Analyst
  + Prepared weekly client-status updates and consulted first-hand with clients regarding changing expectations and service commitments (*Morneau Shepell acquired Mercer's Large Market LOB in August 2019; my responsibilities at Mercer prior to Morneau Shepell's acquisition were identical to that of the above description*)

+ *United States Department of Transportation* | Remote | Sep 2021 - May 2022

  VSFS (Virtual-Student Foreign Service) Intern
  + Worked several hours each week with the Office of International Transportation and Trade's Human Trafficking Initiative and conducted a literature review that included analyzing and synthesizing regional and country-level human trafficking data and interpreting domestic state law and federal law in order to assist in the Department's domestic and international counter-trafficking efforts.

+ *Office of the Director of National Intelligence* | Remote | Sep 2019 - May 2020

  VSFS (Virtual-Student Foreign Service) Intern
  + Worked several hours each week to research intelligence gaps, identify vulnerabilities, and make threat assessments and recommendations as part of a comprehensive brief directed towards ODNI staff and policy-makers – including an ODNI Branch Chief – regarding nuclear energy infrastructure and defense.

Jonathan T. Marinelli

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Highly-motivated, Hard-working, and Enthusiastic

+ *United States Department of State* | Remote | Sep 2018 - May 2019

VSFS (Virtual-Student Foreign Service) Intern

+ Worked several hours each week in order to provide information and analysis to the Vice Consul of the U.S. Embassy in Nairobi, Kenya, and to other staff regarding potential U.S. assets; created a Crisis / Threat matrix for Kenya, Somalia, and the broader East-Africa region

Leadership and Service

+ *Board of Assessors* | Town of Wrentham, MA | August 2017 - June 1, 2021

Chairman and Elected Board Member

+ Actively participates and spoke publicly in bi-monthly meetings and annual town meetings
+ Served as an elected official for the Town of Wrentham, MA, responsible for accurate and responsible Estate and Property Assessment on behalf of the State of Massachusetts
+ Resigned on 6/1/2021 due to moving outside of Wrentham to a different town in Massachusetts, thus becoming ineligible to continue serving in the town of Wrentham

+ *Dartmouth Men's Varsity Lacrosse* | Dartmouth College | Oct 2014 - June 2015

Lacrosse Player, Face-off Specialist

+ Accepted onto the varsity team for the 2014-2015 season after trying out as a walk-on
+ Developed time management skills by devoting 20 hours a week during the academic year

+ *Dartmouth Boxing Club* | Dartmouth College | Oct 2012 - June 2016

Competitor and Student President

+ Coordinated club practice and worked with Athletic Dept. to facilitate club growth and funds
+ Competed in the 2013 New England Golden Gloves tournament

+ *Dartmouth War & Peace Fellows* | Dartmouth College | Oct 2014 - June 2016

Fellow

+ Met with professors and like-minded students to discuss War & Peace related events
+ Attended exclusive group fellowship dinners with former U.S. diplomats and heads of state

+ *Dartmouth Prison Project* | Dartmouth College and Hartford, VT | Sep 2013 - June 2016

Group Co-Chair and Volunteer Service Coordinator

+ Coordinated and prepared monthly dinners at VT Dismas Houses for newly released inmates

+ *Dartmouth Fellowship of Christian Athletes* | Dartmouth College | Oct 2013 - June 2016

Assistant Leader

+ Facilitated and helped lead student-led discussions and events for fellow athletes

+ *Dartmouth Beta Alpha Omega Fraternity* | Dartmouth College | Oct 2013 - June 2016

Active Member

+ Attended weekly meetings and created new service opportunities and brotherhood events

Certifications & Clearances

+ *Security Clearance (Level: Secret)* | Department of Defense | Issued on 4/2013, and on 5/2022
+ *Basic Conversational Fluency in Swedish Language*
+ *Massachusetts Notary Public* | February 2019 - Current

UMass Dartmouth
University of Massachusetts Dartmouth
Office of the University Registrar
285 Old Westport Road
Dartmouth, MA 02747-2300
USA

Official

Audra Callahan
Registrar

Name: Jonathan Marinelli
Student ID: 01760577

Print Date: 03/01/2023
Send To: JONATHAN MARINELLI
,
United States

Degrees Awarded

Degree: Juris Doctor
Confer Date: 05/09/2022
Degree GPA: 3.744
Degree Honors: Magna Cum Laude
Plan: Law Program of Study

---------- **Beginning of Law Record** ----------

2018 Fall

Program: Law
Plan: Law Program of Study

Course		Description	Attempted	Earned	Grade	Points
LAW	500	Academic Skills Lab	0.00	0.00	P	0.000
LAW	510	Legal Skills I	3.00	3.00	B+	9.900
LAW	515	Torts I	3.00	3.00	A-	11.100
LAW	530	Property I	3.00	3.00	A	12.000

		Attempted	Earned	GPA Units	Points
Term GPA:	3.667 Term Totals:	9.00	9.00	9.00	33.000
Cum GPA:	3.667 Cum Totals:	9.00	9.00	9.00	33.000

2019 Spring

Program: Law
Plan: Law Program of Study

Course		Description	Attempted	Earned	Grade	Points
LAW	511	Legal Skills II	3.00	3.00	A-	11.100
LAW	516	Torts II	3.00	3.00	A	12.000
LAW	531	Property II	3.00	3.00	B-	8.100

		Attempted	Earned	GPA Units	Points
Term GPA:	3.467 Term Totals:	9.00	9.00	9.00	31.200
Cum GPA:	3.567 Cum Totals:	18.00	18.00	18.00	64.200

2019 Fall

Program: Law
Plan: Law Program of Study

Course		Description	Attempted	Earned	Grade	Points
LAW	520	Criminal Law	3.00	3.00	A	12.000
LAW	540	Contracts I	3.00	3.00	B-	8.100
LAW	545	Civil Procedure I	3.00	3.00	B+	9.900
LAW	630	Moot Court	3.00	0.00	W	0.000

		Attempted	Earned	GPA Units	Points
Term GPA:	3.333 Term Totals:	12.00	9.00	9.00	30.000
Cum GPA:	3.489 Cum Totals:	30.00	27.00	27.00	94.200

2020 Spring

Program: Law
Plan: Law Program of Study

Course		Description	Attempted	Earned	Grade	Points
LAW	521	Criminal Procedure	3.00	3.00	P	0.000
LAW	541	Contracts II	3.00	3.00	P	0.000
LAW	546	Civil Procedure II	3.00	3.00	P	0.000

		Attempted	Earned	GPA Units	Points
Term GPA:	0.000 Term Totals:	9.00	9.00	0.00	0.000
Cum GPA:	3.489 Cum Totals:	39.00	36.00	27.00	94.200

2020 Summer

Program: Law
Plan: Law Program of Study

Course		Description	Attempted	Earned	Grade	Points
LAW	542	Public Sector Labor Law	3.00	3.00	A-	11.100
LAW	558	Information Privacy Law	3.00	3.00	A	12.000

		Attempted	Earned	GPA Units	Points
Term GPA:	3.850 Term Totals:	6.00	6.00	6.00	23.100
Cum GPA:	3.555 Cum Totals:	45.00	42.00	33.00	117.300

2020 Fall

Program: Law
Plan: Law Program of Study

Course		Description	Attempted	Earned	Grade	Points
LAW	512	Legal Skills III	3.00	3.00	A+	12.000
LAW	555	Constitutional Law I	3.00	3.00	A	12.000
LAW	576	Evidence	3.00	3.00	A-	11.100

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Audra Callahan
Registrar

Name: Jonathan Marinelli
Student ID: 01760577

			Attempted	Earned	GPA Units	Points
Term GPA:	3.900	Term Totals:	9.00	9.00	9.00	35.100
Cum GPA:	3.629	Cum Totals:	54.00	51.00	42.00	152.400

2021 Spring

Program: Law
Plan: Law Program of Study

Course		Description	Attempted	Earned	Grade	Points
LAW	556	Constitutional Law II	3.00	3.00	A	12.000
LAW	560	Administrative Law	3.00	3.00	A	12.000
LAW	615	Secured Transactions	4.00	4.00	A-	14.800
LAW	695	Independent Legal Research	3.00	3.00	A	12.000
Course Topic:		Impact of Nuclear Reg Com on P				

			Attempted	Earned	GPA Units	Points
Term GPA:	3.908	Term Totals:	13.00	13.00	13.00	50.800
Cum GPA:	3.695	Cum Totals:	67.00	64.00	55.00	203.200

2021 Summer

Program: Law
Plan: Law Program of Study

Course		Description	Attempted	Earned	Grade	Points
LAW	620	Trial Practice	3.00	3.00	A-	11.100
LAW	695	Independent Legal Research	2.00	2.00	A	8.000
LAW	710	Transactional Drafting	3.00	3.00	A	12.000

			Attempted	Earned	GPA Units	Points
Term GPA:	3.888	Term Totals:	8.00	8.00	8.00	31.100
Cum GPA:	3.719	Cum Totals:	75.00	72.00	63.00	234.300

2021 Fall

Program: Law
Plan: Law Program of Study

Course		Description	Attempted	Earned	Grade	Points
LAW	602	Employment Law	3.00	3.00	A	12.000
LAW	695	Independent Legal Research	3.00	3.00	A	12.000
Course Topic:		Collective Bargaining Agreemen				
LAW	703	Criminal Prosecution Clinic	3.00	3.00	A-	11.100

			Attempted	Earned	GPA Units	Points
Term GPA:	3.900	Term Totals:	9.00	9.00	9.00	35.100
Cum GPA:	3.742	Cum Totals:	84.00	81.00	72.00	269.400

2022 Spring

Program: Law
Plan: Law Program of Study

Course		Description	Attempted	Earned	Grade	Points
LAW	525	Professional Responsibility	3.00	3.00	B+	9.900
LAW	658	Family Law	3.00	3.00	A	12.000
LAW	694	Bar Preparation	3.00	3.00	A	12.000

			Attempted	Earned	GPA Units	Points
Term GPA:	3.767	Term Totals:	9.00	9.00	9.00	33.900
Cum GPA:	3.744	Cum Totals:	93.00	90.00	81.00	303.300

End of Official

DARTMOUTH COLLEGE

This certifies that Jonathan T. Marinelli was admitted to Dartmouth College in Fall Term 2012 to the Class of 2016 as a candidate for the degree of Bachelor of Arts.

Major: History Complete.
Student Status: A.B. awarded June 12, 2016.

Meredith H. Braz, Registrar

Issued on October 11, 2016

Term	Course	Course Title	Enr.	Med.	CC.	Gr.	Cit.
12F	ASTR002	Exploring the Universe	41	[B+]	1	B	
	GOVT003	American Political System	54	[B+]	1	B+	
	MUS 003	American Music			1	A	
	T.Avg. 3.44	Cum. Avg. 3.44	Cum.CC. 3				
13W	HIST016	Black America to Civil War			1	A-	
	MUS 010	Lives&Works-Great Composers			1	A-	
	WRIT005	Expository Writing	14	[A-]	1	B+	
	T.Avg. 3.56	Cum. Avg. 3.50	Cum.CC. 6				
13S	EARS004	Dinosaurs			0	W	
	GEOG007	Geog. Protest & Revolution	15	[A]	1	A-	
	HIST025	US & the World since 1945	57	[B+]	1	B+	
	T.Avg. 3.50	Cum. Avg. 3.50	Cum.CC. 8				
13F	HIST003	Europe Medieval & Early Mod	38	[B+]	1	B+	
	ITAL001	Introductory Italian I	14	[A /A-]	1	B-	
	REL 065	Sports, Ethics and Religion	98	[A-]	1	B+	
	T.Avg. 3.11	Cum. Avg. 3.39	Cum.CC. 11				
14W	HIST026	Vietnam War	32	[B+]	1	B	
	ITAL002	Introductory Italian II			1	B-	
	SOCY002	Social Problems	50	[A-]	1	B-	
	T.Avg. 2.78	Cum. Avg. 3.26	Cum.CC. 14				
14S	EARS003	Elementary Oceanography	129	[A-]	1	B	
	HIST012	The American Civil War	38	[B+]	1	B-	
	ITAL003	Introductory Italian III	11	[B+]	1	C	
	T.Avg. 2.56	Cum. Avg. 3.14	Cum.CC. 17				
14X	COLT10.02	Robbers, Pirates&Terrorists			1	NR	
	EARS005	Nat. Disaster&Catastrophies	65	[B+]	1	C+	
	HIST05.01	PreColonial African History	18	[B+]	1	B+	
	T.Avg. 2.83	Cum. Avg. 3.11	Cum.CC. 20				
14F	FILM41.06	Bond and Beyond	26	[B+/B]	1	B-	
	HIST010	What is History?	23	[B+]	1	B	
	REL 57.01	The End of The World	11	[A-]	1	B+	
	T.Avg. 3.00	Cum. Avg. 3.09	Cum.CC. 23				

Term	Course	Course Title	Enr.	Med.	CC.	Gr.	Cit.
15S	ENVS028	Global Environmental Health	22	[B+/B]	1	C+	
	HIST96.22	Nazism:Culture,Society,War	12	[B+]	1	B-	
	LACS042	The Aztecs	47	[B+]	1	B	
	T.Avg. 2.67	Cum. Avg. 3.04	Cum.CC. 26				
15F	ARTH16.19	Satire: Art Polit Critique	20	[A]	1	A	
	HIST036	Health Care In Am Society	40	[B+]	1	B	
	REL 052	Religion and Music in Cuba	29	[A-]	1	A-	
	T.Avg. 3.56	Cum. Avg. 3.10	Cum.CC. 29				
16W	ENGL010	Anglo-Saxon&Scand Epic&Saga	11	[A-]	1	B+	
	HIST96.02	Empires,Imperialism & the US	11	[A-]	1	B	
	REL 57.06	History of Heaven	16	[A-]	1	B+	
	T.Avg. 3.22	Cum. Avg. 3.11	Cum.CC. 32				
16S	ASTR001	Exploration of Solar System	94	[A-/B+]	1	B-	
	EARS070	Glaciology	12	[B+/B]	1	C	
	HIST05.02	Intro to Mod Middle East	20	[A-]	1	C+	
	T.Avg. 2.33	Cum. Avg. 3.04	Cum.CC. 35				

Courses which exceeded the median grade: 0
Courses which equaled the median grade: 6
Courses below the median grade: 24
Courses taken eligible for this comparison: 30

END OF RECORD

Dartmouth Hall, built 1784

DARTMOUTH COLLEGE

DARTMOUTH COLLEGE

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Statement of Credits

This record is for a student who was registered Fall 1985 or later. All courses are in the form of course units. Each course count unit may be considered the equivalent of a semester course worth 3.3 semester hours (4.5 if a laboratory course) or 5 quarter hours (6.7 if a laboratory course).

EXPLANATION OF UNDERGRADUATE RECORD

Admission to Dartmouth College is based upon approval of the entire record of preparation and not solely upon units that have been recorded. Student Status is indicated as: Active, Graduated, Resigned, Separated, Suspended or Withdrawn. The normal course load is three but, within specified limits, loads of two or four courses are allowed. Terms are identified by the last two digits of the calendar year followed by F for Fall, W for Winter, S for Spring, X for Summer, or ADV for Advanced Placement credits and exemptions.

Column Headings

Class of 1987 and prior classes

GR	Grade Received
CC	Course Count
CIT	Citation

Additional headings for the Class of 1998 and later

ENR	Course Enrollment
MED	Median Grade for course

Median grades are not calculated for courses with fewer than ten students or for classes earlier than 1998

Course Numbering and Level

1-9	Primarily Introductory Level Courses
10-79	Primarily General Course Offerings
80-89	Certain Special Types of Courses
90-99	Certain Advanced Undergraduate Major Courses
100-299	Graduate Level Courses

Explanation of Honors

Honors in Awarding of the Degree:

Awarding of honors for the Bachelor of Arts degree is based on the cumulative averages of the past three years' graduates.

Summa cum Laude	Top 5%
Magna cum Laude	Top 15%
Cum Laude	Top 35%

Honor Groups for Academic Year:

Awarding of the honor groups is based on the grade point average from all classes of the previous year.

Rufus Choate Scholar	Top 5%
Second Honor Group	Top 15%
Third Honor Group	Top 35%

Departmental Honors:

Honors: Honors Program completed with a minimum average of B+ in the courses of the Honors Program.

High Honors: Honors Program completed and by vote of the department on the basis of outstanding independent work.

Grades and Points

A	4
A-	3 2/3
B+	3 1/3
B	3
B-	2 2/3
C+	2 1/3
C	2
C-	1 2/3
D	1
E	0

Other Designations

AD	①	Administrative Delay-Temporary Designation
CR	②	Credit on Entrance
CT	①	Credit for Dartmouth course (Credit/No Credit Option)
EX	③	Exemption
I	①	Incomplete-Temporary Designation
NC	③	No Course Credit (Credit/No Credit Option)
NR	②	Non-Recording Option
ON	①	On-going Course-Temporary Designation
TR	②	Transferred Course
W		Withdrawn from Course
*		Citation

Course Count Requirement for Degree

1972-87	33
1988 to present	35

Key for Other Designations

①	Not used in computing grade point average
②	Course credit only. (Not used in computing grade point average)
③	No course credit
#	Course credit only. (Not used in computing grade point average)
*	Citation for meritorious performance

EXPLANATION OF GRADUATE RECORD

HP	High Pass	Superior quality
P	Pass	Good quality
LP	Low Pass	Acceptable quality
NC	No Credit	Work that is not acceptable for graduate credit
CT	Credit	Satisfactory work in certain courses; such as research courses, that assignment of a grade of HP, P and LP is considered inappropriate. The grade of CT is not intended as a routine alternative to the HP, P, LP system. CT is the *only* passing grade in a course in which it is used.

Graduate students enrolled in undergraduate courses are graded on the undergraduate grading system.

UNIVERSITY OF MASSACHUSETTS
SCHOOL OF LAW · DARTMOUTH

June 11, 2021
TO WHOM IT MAY CONCERN:

Re: Application of Jonathan T. Marinelli

Without hesitation and with great pleasure, I write to recommend Mr. Marinelli as an extremely capable and talented person to be seriously considered for this position.

Mr. Marinelli is well known to me as a student in my two semester course in Constitutional Law. This summer, he is doing a research paper under my supervision. He is a model student, always prompt, always prepared, contributing intelligently and significantly to class discussions. His demeanor at all times is thoughtful and respectful. He exhibits all of the qualities that enrich the legal profession. His transcript at the Law School reveals that he is not only a top student in my classes but that he consistently maintains the highest grades in all of his courses.

He possesses highly developed research skills. His two semester research project on a current Supreme Court case included reading and assessing litigant and amici arguments, assessing oral arguments and analyzing the final decision. His research products are stellar.

Mr. Marinelli's life experiences attest to his maturity and dedication to the law. As an undergraduate student majoring in History and War and Peace Studies, he was named a War and Peace Fellow. He interned during his law school career with the United States Department of State and with the Office of the Director of National Intelligence for two eight month periods as a Virtual-Student Foreign Service Intern. While attending law school, he has worked full time as a senior data analyst for a major firm focusing on health benefits and, for the last five years, he served on the Board of Assessors for Wrentham, Massachusetts. Attesting to his reliability is the fact that he holds a Basic Security clearance awarded in 2013 by the Department of Defense.

I am confident that he will conscientiously bring this experience and dedication to all his endeavors, and that he deserves your serious consideration of his application.

Sincerely,

Frances Howell Rudko

Frances Howell Rudko, MA, PhD., JD
Professor of Law
Member: Massachusetts Bar 639528
Arkansas Bar 73105
Member: Supreme Court Bar

Pursue Justice
333 Faunce Corner Road, Dartmouth, MA 02747-1252
508.985.1100 · umassd.edu/law
email : frudko@umassd.edu · phone: 508.985.1144

UMASS LAW
Elizabeth Y. McCuskey
Professor
333 Faunce Corner Road
Dartmouth, MA 02747
emccuskey@umassd.edu

June 22, 2021

RE: Recommendation for Jonathan Marinelli

To Whom It May Concern:

I write to recommend Jonathan Marinelli for the legal position to which he has applied. I had the pleasure of serving as Mr. Marinelli's professor in both semesters of Civil Procedure at UMass Law. His conscientiousness, aptitude for procedure, and strong communication skills make him particularly well-suited to work on challenging legal matters, both independently and as a valuable team member. Further, Mr. Marinelli is a dedicated learner and therefore a joy to teach. I am confident he will make the kind of lawyer that will make this institution proud and will fulfil our mission to "Pursue Justice" to its highest ideals.

Throughout the yearlong course in Civil Procedure, Mr. Marinelli remained diligently prepared, passionately engaged, and receptive to feedback and diverse perspectives. His appetite for learning seemed never to wane, which is especially impressive in light of the fact that the class met at night and on the weekends. Mr. Marinelli showed a keen interest in and inclination toward understanding the strategic ramifications of procedure – both for the parties and for the broader enterprise of the civil justice system. He consistently made meaningful contributions to our class discussions, welcomed by both his colleagues and this professor.

As Mr. Marinelli's resume demonstrates, he embraces intellectual challenge and the ethos of public service. From our time together in the classroom, as well as individual discussions during office hours, I have been impressed by Mr. Marinelli's constant professionalism, no matter the setting or the audience. When our Spring 2020 semester was interrupted by the COVID-19 pandemic and abruptly transitioned to online learning, Mr. Marinelli adapted instantly, showing patience and empathy, while maintaining focus on his educational mission.

Based on my work with Mr. Marinelli, I can attest to his intelligence, work ethic, and dedication to public service. For these reasons, I encourage you to give his application the serious consideration it merits and I wholeheartedly recommend him.

Sincerely,

Elizabeth Y. McCuskey

UNIVERSITY OF MASSACHUSETTS
SCHOOL OF LAW · DARTMOUTH

June 16, 2021

To Whom It May Concern,

Re: Jonathan Marinelli

Dear Sir or Madam:

It is my great pleasure to recommend Jonathan Marinelli, a candidate for employment with your organization. I have known and taught Mr. Marinelli beginning in academic year 2019-2020 at the University of Massachusetts School of Law. He studied Criminal Law and Criminal Procedure with me. He distinguished himself in both my classes, so I'm well acquainted with him and with his work.

Having been an attorney in practice for over forty years, I believe I know the makings of a good lawyer when I see one. I'm confident that Mr. Marinelli will be a credit to our profession. I can personally attest to his extraordinary diligence and high integrity. Jonathan's classroom presence is articulate and engaging: he has a great way with people. He's a genuinely hard worker and a high achiever. Jonathan turned in consistently superior performances both my courses. What I found particularly impressive was his ability to discuss complex factual and legal issues from memory and with a total command of the assigned materials. His skills are already those of a seasoned advocate.

Jonathan has the intelligence and imagination to succeed in any area of the law that he may ultimately choose. I predict that he'll have an outstanding career at the bar. I recommend him to you with the greatest enthusiasm. I'm happy to speak with you on his behalf and answer any questions you may have. The best way to reach me is by my mobile phone at (508) 525-5272.

Thank you for considering his candidacy; he would be a great asset to your organization.

Very truly yours,

/s/Kevin Connelly
Attorney and Lecturer in Law

Pursue Justice

333 Faunce Corner Road, Dartmouth, MA 02747-1252 508.985.1164 ·
kconnelly@umassd.edu

ARGUMENT

I. THE MOTION TO DISMISS SHOULD BE GRANTED GIVEN THAT MS. HOLLAND'S ACTIONS DID NOT SATISFY THE ELEMENTS OF THE DISORDERLY CONDUCT CHARGE OR REACH THE EXTREME LEVEL OF CONDUCT THE STATUTE INTENDS TO CRIMINALIZE.

The Commonwealth cannot prove the charge of Disorderly Conduct against Ms. Holland. An individual is not guilty of Disorderly Conduct under Mass. Gen. Laws ch. 272, § 53(b) (2018) unless she: (1) purposely or recklessly "causes public inconvenience, annoyance, or alarm" by: (2)(a) engaging in "fighting or threatening", or (2)(b) in "violent or tumultuous behavior." *Commonwealth v. A Juvenile*, 368 Mass. 580, 585-86 (1975); *Commonwealth v. Mulvey*, 57 Mass. App. Ct. 579, 582 (2003). It is recognized that "the theory behind criminalizing disorderly conduct rests on the tendency of the actor's conduct to provoke violence in others." *Mulvey*, 57 Mass. App. Ct. at 584. Ms. Holland's behavior inside of Tall's Jewelers was neither intentional nor reckless, and she did not create an inconvenience, alarm, or annoyance to those present inside the store or the larger public. Ms. Holland also refrained from engaging in either of the two forms of prohibited conduct: "violent or tumultuous behavior" or "fighting or threatening" behavior. Convicting her of such a charge would be a misconstruction of the statute given the legislative aims for which it was created.

A. Ms. Holland Did Not Create A Public Inconvenience, Annoyance, Or Alarm Because She Did Not Intentionally Or Recklessly Alarm Or Inconvenience Others, Or Draw A Large Crowd Of Onlookers During The Incident.

The Commonwealth should not find Ms. Holland guilty of intentionally or recklessly creating a public inconvenience, annoyance, or alarm. An individual is found guilty of this charge only when she "recklessly or intentionally disturb[s] the public tranquility or inconvenience[s], alarm[s], or provoke[s] others" in a place to which the public has access. *Commonwealth v.*

Mulero, 38 Mass. App. Ct. 963, 963 (1995). Both parties are in agreement that the incident transpired in a place to which the public has access.

An individual must intentionally or recklessly engage in conduct that creates a public inconvenience or is annoying or alarming. In *Commonwealth v. Accime*, 476 Mass. 469, 470 (2017), the defendant was in the process of being admitted to a hospital's emergency room when he became belligerent and began to struggle with hospital staff. Upon learning that he had to stay for evaluation, the defendant berated staff and security personnel and adopted a "fighting stance". *Id.* at 470-71. The Court held that the defendant was not guilty of disorderly conduct because there was no evidence to suggest he was aware of the impact his conduct had on those in the area and for the fact that he had not acted with the "requisite consciousness" needed under the statute. *Id.* at 474. In contrast, in *Juvenile*, the defendant was charged with disorderly conduct for repeatedly accosting employees inside a department store. 368 Mass. at 582. After first leaving the store, he then intentionally returned to once again harangue the "captive" employees with offensive language and gestures. *Id.* at 583. While the Court held that the defendant was not guilty of disorderly conduct given that his speech was constitutionally protected, they recognized that his actions were intentional and had disturbed the store employees present. *Id.* at 593-94. They further reasoned that, in determining such a charge, "public inconvenience, annoyance, or alarm must be assessed in terms of whether the conduct was engaged in with intent." *Id.* at 598.

Only when an individual engages in behavior that disturbs or impacts any surrounding persons and thereby attracts a large crowd of onlookers, can she be found guilty. In *Mulero*, the defendant "flailed his arms", yelled obscenities at officers, and failed to comply with their orders when he was confronted on a public street. 38 Mass. App. Ct. at 963. Attracted by the incident, a crowd of thirty onlookers began to assemble at the scene and observe, while still others looked

on from nearby residences. *Id.* The Court held that the defendant was guilty of disorderly conduct for the fact that he engaged in behavior that went "beyond protected expressive speech or conduct" and had inconvenienced and alarmed the public by disobeying police orders while simultaneously drawing a large crowd of onlookers. *Id.* at 965. In contrast, in *Commonwealth v. Zettel,* 46 Mass. App. Ct. 471, 471 (1999), the defendant was charged with disorderly conduct after, while attempting to pick up her young child from school, she refused to comply with a police officer's order to move her car from in front of the school and began to shout at the officer. *Id*. The Court held that the defendant was not guilty of disorderly conduct, despite the fact that she struggled with the officer and even kicked him. *Id.* at 475. The Court reasoned that the defendant's conduct was limited to a single police officer and was far enough removed from other persons so as not to render the incident an inconvenience or annoyance to the public. *Id. See also Commonwealth v. Sinai*, 47 Mass. App. Ct. 544, 548 (1999) (noting that, in the *Zettel* case, "there was no evidence that [her] conduct attracted a crowd of onlookers" or that her "resisting of arrest required more than one officer to subdue her.") *But see Commonwealth v. Sholley*, 432 Mass. 721, 729 (2000) (supporting a conviction and holding that the defendant's behavior was entered into consciously and drew a large number of onlookers from their "ordinary duties to respond to that noise and commotion.")

Ms. Holland did not intentionally or recklessly engage in alarming or inconveniencing conduct because her behavior was a predictable emotional response to the anger and fear she experienced both before and during the incident. Like *Accime,* where the defendant did not intentionally or consciously engage in creating a disturbance and instead reacted to unwanted orders, here Ms. Holland's behavior was also an emotional response to learning unwanted information. Ms. Holland was entirely unaware that her fiance had stolen her engagement ring,

and her emotional outbursts, which included "that lying son-of-a-b-tch!" and "That b-st-rd!" were not consciously intended to inconvenience Ms. Tall, Officer Shea, or the larger public, but were instead directed towards the actions of her fiance. Just as the *Accime* Court found the defendant not guilty, here a court should also find Ms. Holland not guilty for her lack of intent and her lack of conscious impact on others. Unlike *A Juvenile,* where the defendant intentionally returned to a store to once again accost multiple, "captive" employees, here Ms. Holland's behavior was not entered into intentionally, nor did she prolong the exchange by leaving and then purposefully returning to continue. Rather, Ms. Holland, a young, immature teenager was crying throughout the incident, pleading that the Officer not arrest her out of fear of her losing her job and asking him to leave her alone. Whereas the Court in *A Juvenile,* found the defendant satisfied the requirement of intent by returning to continue his assail, here a court should not find Ms. Holland's behavior intentional given that her conduct was a limited, emotional response.

Ms. Holland's conduct did not alarm or annoy any surrounding individuals and was limited to the responding police officer. Unlike *Mulero,* where the defendant directed profanities at a specific officer and flailed his arms at him in front of a large crowd of onlookers, here Ms. Holland at no point in time insulted Officer Shea or called him crude or profane names. While her behavior towards the officer may have been rude in nature, such responses are to be expected in the police profession, and her emotionally-charged conduct was not directed towards Ms. Tall or any other surrounding individual. Ms. Holland's conduct did not draw a large crowd of onlookers or annoy others in the surrounding mall, even if a "few" mall shoppers stopped far outside of the incident out of pure curiosity. Whereas the *Mulero* Court found the defendant to have satisfied the element by drawing and annoying onlookers to the incident, here a court should find that Ms. Holland's conduct was free from derogatory remarks towards police and did

not draw a large number of spectators. Like *Zettel,* where the defendant's conduct was limited to a single police officer and far enough removed from other persons, here Ms. Holland's conduct was similarly confined to Officer Shea only and was not in close proximity to other mall patrons. Ms. Holland's outburst was not directed towards Ms. Tall, but was instead limited to Officer Shea and began only after he arrived at the scene. His sole effort was sufficient in subduing her, and at no point during the incident did Shea have to call on additional officers for assistance. Just as the *Zettel* Court found the defendant did not disturb others or require the efforts of multiple officers, here a court should similarly find that Ms. Holland's conduct was limited to a single officer and was not directed towards any others. The Commonwealth cannot find Ms. Holland guilty of intentionally or recklessly creating a public inconvenience, annoyance, or alarm because she lacked the requisite intent, her conduct was limited to a single officer, and because her behavior did not draw a crowd of onlookers or disturb anyone in the surrounding area.

B. Ms. Holland Did Not Engage In Any Form Of Prohibited Conduct Because She Did Not Fight Or Threaten Anyone Present During The Incident Nor Did She Engage in Violent Or Tumultuous Behavior.

1. Ms. Holland's conduct did not include fighting or threatening behavior.

The Commonwealth cannot construe Ms. Holland's actions as fighting or threatening because she at no point physically struck, attempted to strike, or even threatened to harm anyone during the incident. Rather, fighting or threatening behavior is limited to conduct that either employs the "use of physical force or violence", or includes "any threat to use such force or violence if the threat is possible of immediate execution." *Sinai,* 47 Mass. App. Ct. at 548.

An individual's conduct can only be classified as fighting or threatening when he physically strikes, attempts to strike, or threatens to strike, a responding police officer or any other individual in the area surrounding the incident. In *Commonwealth v. Richards*, 369 Mass. 443,

443 (1976), the defendant and others used physical force to assault police officers and then resist their arrest. The defendant's fighting and "abusive" use of force included him striking one officer in the mouth with his fist and kicking another in the arm. *Id*. at 448. As such, the Court found the defendant guilty of fighting because of his overt use of physical force and the clear and present threat of violence he posed to police officers. Id. Similarly, in *Sholley*, the defendant ran "screaming" in the halls of a district court in response to a ruling made by a judge. 432 Mass. at 722. During the incident, the defendant threatened court officers and other staff, warned that there would be "blood in the streets", and even waved his finger at an Assistant District Attorney and shouted, "Watch out counselor." Id. at 724. The Court held that the defendant was guilty of disorderly conduct, because his "tirade included remarks of a threatening nature" and for the fact that placed court employees in imminent apprehension of the threat of violence. Id. at 728-29.

The Commonwealth cannot construe Ms. Holland's conduct as fighting or threatening because she did not use physical force or violence to strike Officer Shea or Ms. Tall, nor did she threaten to do so. Unlike *Richards*, where the defendant viciously and repeatedly punched police in front of a crowd of onlookers, here Ms. Holland refrained from engaging in any such conduct and at no point struck or attempted to strike Officer Shea or Ms. Tall. While she may have thrown a small, diamond ring at Officer Shea, this action was negligible and cannot be construed as a physically violent act in the context of what is required under the statute. Whereas the court in *Richards* found the defendant guilty under the statute for his use of violent, physical force, here the Court should not classify Ms. Holland's behavior as involving fighting given her lack of physical force. Unlike *Sholley*, where the defendant blatantly threatened court staff and warned of impending violence, here Ms. Holland made no such threats and furthermore lacked the present ability to execute any. Ms. Holland did not place either individuals in apprehension of

imminent offensive contact. In contrast to *Sholley,* where the defendant pointed his finger and came within "inches" of an assistant district attorney while threatening her personally, Ms. Holland's speech was free from threats and she made no physical gestures that could be construed as threatening. Whereas the Court in *Sholley* found the defendant had engaged in threatening conduct, here the Court should recognize that Ms. Holland's behavior fell well short of threatening and did not place those around her in apprehension. Ms. Holland's lack of physical force and violence during the incident distinguishes her behavior from that of disorderly conduct, and her actions are wholly insufficient to support a conviction given common law precedent.

2. Ms. Holland's conduct was not inherently tumultuous, did not create an "extreme" or "riotous" commotion, and did not incite or provoke others or create a public safety risk.

The Commonwealth is also unable to prove that Ms. Holland engaged in violent or tumultuous behavior. A person's conduct will not be found to be violent or tumultuous unless it reaches an extreme level of "riotous commotion" or "excessively unreasonable noise", is inherently tumultuous in nature, or incites or provokes others in the surrounding area and thereby creates a public safety risk. *Sholley,* 432 Mass. at 729.

A person's actions cannot be said to be violent or tumultuous if that conduct fails to reach the "extreme" level of riotous commotion or excessively unreasonable noise needed under the standard. In *Sinai,* the defendant screamed at police, and "pound[ed] the steering wheel" of his vehicle when confronted by an attendant and nearby police officer and asked to pay a parking ticket. 47 Mass. App. Ct. at 548. As the incident progressed, the defendant became more aggressive -- at some points even "attempting to strike" the officer -- while multiple vehicles began to back up in the line behind his car. *Id.* The Court held that the defendant was guilty of

disorderly conduct due to his tumultuous behavior inside of his vehicle, and because the commotion he created by "screaming towards" police had caused "traffic to be re-routed." *Id.* at 549. Likewise, in *Commonwealth v. Carson*, 10 Mass. App. Ct. 920, 920 (1980), police responded to complaints of a disturbance in a college dormitory. After an officer confronted the defendant and began to question him, the defendant, who was visibly intoxicated and agitated, attracted an audience of rowdy onlookers and "started getting louder and louder." *Id.* at 921. The defendant then resisted the officer's grasp, evaded his control, and fled in a zig-zag pattern the Court characterized as "tumultuous." *Id.* The Court held that the defendant was guilty of disorderly conduct given the riotous condition and level of noise he generated, and further reasoned that his behavior towards police and the crowd were inherently "tumultuous". *Id.*

A person can be said to be violent or tumultuous only if his conduct incites or provokes others in the surrounding area and thereby creates a public safety risk. In *Commonwealth v. Marcavage*, 76 Mass. App. Ct. 34, 40 (2009), the defendant preached and evangelized to a crowd of over fifty people with a megaphone on Halloween night. After the defendant refused to heed police orders and cease preaching, officers placed the defendant under arrest. *Id.* at 36. The Court held that the defendant was guilty and had created a "threat to public safety" by inciting and provoking the boisterous crowd and thereby placing nearby police officers in danger. *Id.* at 38. The Court noted that his conduct had "engendered hostility toward police and disrespect for their authority among the crowd" and had endangered police by "reducing [their] ability . . . to maintain order." *Id.* Likewise, in *Commonwealth v. Manzelli,* 68 Mass. App. Ct. 691, 692 (2007), the defendant was charged with disorderly conduct after he recorded police in the midst of a protest and further incited the crowd by throwing the recordings at them while being chased by police. The police officers that retrieved the tapes were swarmed by protesters, and one officer was punched by a

protestor "in the eye . . . as she attempted to collect the items." *Id.* at 692. The Court held that the defendant was guilty of disorderly conduct not only for his "fighting", but also his "violent behavior." *Id.* at 700. The Court reasoned that the defendant's tumultuous, violent conduct had provoked the crowd and endangered police. *Id.*

Ms. Holland's actions during the incident failed to reach the "extreme" level of riotous commotion or excessively unreasonable noise needed to support a conviction. Unlike *Sinai,* where the defendant created congestion and commotion in a parking lot by struggling with police and refusing to move his vehicle, here Ms. Holland did not create a similar disturbance. Her emotionally-charged behavior towards Officer Shea was not extreme and did not cause "riotous" commotion, even if she did at one point slightly "twist away from [his] grasp".Whereas the Court in *Sinai* found the defendant guilty for the "extreme" level of commotion he caused, here a court should recognize that Ms. Holland's behavior did not reach the extreme degree needed to support a conviction. Unlike *Carson*, where an intoxicated defendant loudly berated police officers in front of a crowd of onlookers before leading them on a drunken chase throughout his dormitory, Ms. Holland caused no such disturbance. Instead, Ms. Holland was sober, dressed professionally, and was trying to arrive to work on time when she was confronted by Officer Shea. Furthermore, there was no crowd of onlookers present during the incident and no other individuals involved in the disturbance. Whereas the Court in *Carson* found the defendant had engaged in commotion and generated extreme noise, Ms. Holland's behavior was confined to Tall's jewelers, Officer Shea, and caused no larger disturbance.

Ms. Holland's conduct did not incite or provoke others in the surrounding area and did not create a public safety risk. Unlike *Marcavage,* where the defendant provoked a large crowd with inciteful speech using a megaphone and thereby caused a public safety risk to himself and police,

here Ms. Holland's actions were much less extreme. The incident involving Ms. Holland drew no crowd of onlookers, and the "few" mall shoppers that stopped to listen outside of the store were not in close proximity, nor were they involved. Whereas the Court in *Marcavage* found the defendant provoked a large crowd and thus created a public safety risk, here a court should find that the absence of such a crowd and inciting behavior did not result in a public safety risk. Unlike *Manzelli,* where the defendant provoked and threw recordings of police into a crowd of onlookers and thereby caused one officer to be assaulted, here Ms. Holland lacked such behavior. Whereas the Court in *Manzelli* found the defendant guilty for endangering police by provoking a crowd, here a court should recognize that Ms. Holland's behavior is in no way comparable. The Commonwealth cannot find Ms. Holland guilty of engaging in violent or tumultuous behavior because her conduct did not reach an extreme level of "riotous commotion" or "excessively unreasonable noise", nor did it incite or provoke others in the surrounding area or create a risk to public safety.

Applicant Details

First Name	**Joseph**
Last Name	**Marino**
Citizenship Status	**U. S. Citizen**
Email Address	**marinj7@unlv.nevada.edu**
Address	**Address** Street **300 Shipwright Loop, Apt A103** City **Williamsburg** State/Territory **Virginia** Zip **23188** Country **United States**
Contact Phone Number	**516-639-3907**

Applicant Education

BA/BS From	**State University of New York-Buffalo**
Date of BA/BS	**May 2021**
JD/LLB From	**University of Nevada, Las Vegas, William S. Boyd School of Law** **http://www.law.unlv.edu**
Date of JD/LLB	**May 10, 2024**
Class Rank	**30%**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Rapoport, Nancy
nancy.rapoport@unlv.edu
702-895-5831
Rieke, Lena
lena.rieke@unlv.edu
Edwards, Benjamin
benjamin.edwards@unlv.edu
702-895-2402

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Joseph J. Marino

300 Shipwright Loop, Apt A103, Williamsburg, VA 23188
(516) 639-3907; josephjamesmarino@gmail.com

June 7, 2023

The Honorable Jamar K. Walker
United States District Court, Eastern District of Virginia
600 Granby Street, 3rd Floor
Norfolk, VA 23510

Dear Judge Walker:

I am writing to express my interest in a clerkship in your chambers starting in August 2024. I am a rising third-year law student. I completed my first two years of law school at the William S. Boyd School of Law, University of Nevada, Las Vegas. I will be attending University of Richmond School of Law or William & Mary Law School as a 3L visiting student for the 2023-2024 academic year. I recently moved to Williamsburg with my fiancé. Virginia is where I will take the bar exam in 2024. This summer, I was selected for the Honors Internship Program with the Federal Bureau of Investigation (FBI). A clerkship in your chambers would set me up for a successful legal career. Clerking in your chambers at the United States District Court for the Eastern District of Virginia would be my first choice for a job after I graduate.

My background exhibits strong analytical and organizational skills, and work ethic. I graduated from University at Buffalo in three years with honors. In my final semester, I completed a 45-page honors thesis while taking a heavy course load. At Boyd School of Law, we put great focus on legal writing and research. I have been able to take an extraordinary amount of time to craft my legal writing and researching skills to help prepare for my career. I acquired effective time management skills as a result of my prior work experience with both the Glenwood Corporation (in New York City) and Windham Legal, LLC, as I had to manage multiple tasks and complete them in a timely manner.

During my first year of law school, I was eager to start working as a law clerk. I accepted a job offer from Johnson & Gubler, P.C. As one of the premier bankruptcy and business litigation law firms in Nevada, I have gained a plethora of experience. I was tasked to work on cases independently and welcomed the immense responsibility. In just the last few months, I have been able to meet with clients, draft complaints, motions, and oppositions, work on closing arguments, complete discovery for multiple cases, draft briefs for arbitration, and attend a motion to dismiss hearing alongside the senior partner. Throughout my time at the firm, my responsibilities increased, and I was entrusted with reviewing other employees' work. For the Spring 2023 semester, I accepted an offer to be a judicial extern for the Honorable Judge James C. Mahan of the United States District Court – District of Nevada. As an extern for Judge Mahan, I wrote several thorough and precise judicial orders and worked on scripts and memos for sentencings and trials.

I have included a copy of my resume, transcripts, and writing sample for your review. Please let me know if I can provide any additional information at (516) 639-3907 or josephjamesmarino@gmail.com. I hope I have the opportunity to interview with you. Thank you for your time and consideration.

Respectfully,

Joseph Marino

JOSEPH J. MARINO

300 Shipwright Loop, Apt A103, Williamsburg, VA 23188 | (516) 639-3907 | josephjamesmarino@gmail.com

EDUCATION

UNIVERSITY OF RICHMOND, T.C. WILLIAMS SCHOOL OF LAW | Richmond, Virginia
Juris Doctor - Visiting Student | 2023 – 2024 Academic Year (offer extended)
* My visiting year application to William & Mary Law School is pending so my final decision has not been made. I will be attending either University of Richmond or William & Mary for my last year of law school.

WILLIAM S. BOYD SCHOOL OF LAW – UNIVERSITY OF NEVADA, LAS VEGAS | Las Vegas, Nevada
Juris Doctor | Expected: May 2024
GPA: 3.35
Honors: Academic Scholarship, Fall 2021 – Present
Graduate Fellow, Fall 2021 – Present
Activities: Academic Standards Committee, Dean-Appointed Member, 2021 – Present
Sports and Entertainment Law Association, Member, 2021 – Present

UNIVERSITY AT BUFFALO - SUNY | Buffalo, New York
Bachelor of Arts | *summa cum laude* |Double Major: Political Science & History | May 2021
GPA: 3.93
Honors: Dean's List, six consecutive semesters
Pride of New York Merit Scholarship, six consecutive semesters
Activities: Tennis Club Aces, Competitive Player, 2018 – 2021

LEGAL EXPERIENCE

FEDERAL BUREAU OF INVESTIGATION | June 2023 – Present (offer accepted) | Richmond, VA
2023 Honors Internship Program: This year, the FBI's Honors Program received over 15,000 applications, and around 300 were selected for this incredible opportunity to get a behind the scenes view of and work for the most prestigious law enforcement agency in the world. I am honored to be one of the very select few to receive this honor. I work on legal tasks for my assigned squad, attend meetings with special agents and support staff, build connections and talk about current cases with fellow employees/interns.

WILLICK LAW GROUP | May 2023 – Present | Las Vegas, NV
Law Clerk: Work part-time remotely for a family law firm based in Nevada. My responsibilities include conducting legal research and memos for current cases, writing case briefs/summaries which are then posted to the firm's family law database, researching applicable statutes and cases to update their internal and external resources.

UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA| January 2023 - April 2023 | Las Vegas, NV
Judicial Extern to the Honorable James C. Mahan: Wrote five opinions after discussing legal issues with law clerks and researching relevant case law. Researched case law on issues such as compassionate release, COVID/insurance business coverage, bankruptcy, contract waiver. Discussed research, analysis, and recommendations with Judge Mahan. Attended change of plea hearings, sentencing hearings, revocation hearings, motion hearings, status conferences, calendar calls, and jury trials.

JOHNSON & GUBLER, P.C. | March 2022 - October 2022 | Las Vegas, NV
Law Clerk: Mentored by attorney, Matthew Johnson. Drafted documents, including complaints, answers, interpleaders, impleaders, interrogatories, motions, requests for discovery, etc. Completed legal research on case law and statutes. Met and worked with clients regularly and attended hearings alongside Mr. Johnson. Practice areas in Business Litigation, Bankruptcy, Guardianships & Adoptions, Personal Injury, Property Law, Wills & Trusts in Nevada, Utah, Colorado, and Arizona.

COMMUNITY SERVICE PROGRAM, BOYD LAW - KIDS' COURT SCHOOL | January 2022 - May 2022 | Las Vegas, NV
Community Service Volunteer: Conducted weekly mock trials with children from the local community to prepare them for court. Kids' Court School educates children about the court process with an evidence-based curriculum designed to teach youth about the process and reduce the potentially traumatic effects of the courtroom. The program focuses on legal knowledge, stress reduction strategies, and courtroom desensitization through a mock trial in an actual courtroom.

WINDHAM LEGAL, LLC | June 2020 - August 2020 | Windham, NY
Summer Intern: Shadowed attorney, Kevin Maldonado. Organized, scanned, and processed legal documents for pending cases for several lawyers. Handled day-to-day administrative duties at the office when others worked remotely.

GLENWOOD MANAGEMENT CORP. | May 2019 - August 2019| New York, NY
Summer Intern/Temporary On-site Manager: Filled-in for different on-site managers of apartment buildings across New York City. Wrote up work orders and directed staff of the entire building.

NASSAU COUNTY YOUTH COURT | August 2015 - July 2018 | Mineola, NY
Acting Lawyer Volunteer: Prosecuted or defended the accused based on cases sent to youth court from higher district courts to keep minors from attaining criminal records. Worked side-by-side with the District Attorney of Nassau County, Madeline Singas, and Assistant District Attorney of Nassau County, Arianne Reyer. Prepared and performed questions to ask defendants and witnesses. Recommended sentencing guidelines to the jury, composed of past defendants.

ADDITIONAL EXPERIENCE

BALANCED BODY FOODS | August 2020 - August 2021| Buffalo, NY
Brand Representative/Sales Associate: Greeted and worked with customers, operated the cash register, made protein shakes and smoothies, increased in-store sales, achieved established goals, and introduced customers to the Balanced Habits Program.

UNIVERSITY AT BUFFALO CAMPUS TEES | September 2019 - May 2020| Buffalo, NY
Sales Associate: Held several positions. Handled customer transactions, answered questions about store products, and stocked the store with new merchandise. Worked at various on-campus events, such as football games and commencement.

LADY FOOT LOCKER | April 2018 - August 2018| Mineola, NY
Sales Associate: Worked one-on-one with customers, operated cash registers, increased in-store sales, attained sales goals, and cross-sold products.

Unofficial Transcript

Student ID: 2002104582 **Name: Marino,Joseph J**

06/06/2023 Page 1 of 1
Order Nbr: 001780565

Beginning of Law Record

2021 Fall

			Att	Ehr	Grd
LAW	503	Contracts	4.00	4.00	A
LAW	505	Lawyering Process I	3.00	3.00	B+
LAW	511	Civ Proc / Adr	4.00	4.00	B+
LAW	523	Torts	4.00	4.00	B-
LAW	790	Policing, Protest, & Reform	1.00	1.00	A-

	Att	Earned	Points	GPA	GP Bal
Term Totals:	16.00	16.00	53.60	3.35	21.60
Cumulative Totals:	16.00	16.00	53.60	3.35	21.60

2022 Spring

			Att	Ehr	Grd
LAW	515	Lawyering Process II	3.00	3.00	B+
LAW	517	Constitutional Law I	3.00	3.00	B+
LAW	521	Property	4.00	4.00	B+
LAW	616	Criminal Law	3.00	3.00	B-
LAW	640	Labor Law	3.00	3.00	S

	Att	Earned	Points	GPA	GP Bal
Term Totals:	16.00	16.00	41.10	3.16	15.10
Cumulative Totals:	32.00	32.00	94.70	3.26	36.70

2022 Fall

			Att	Ehr	Grd
LAW	613	Professional Resp	3.00	3.00	B
LAW	624	Con Law II	3.00	3.00	B+
LAW	689	Resort Hotel Casino Law	3.00	3.00	B+
LAW	736	Securities Regulation	3.00	3.00	B+
LAW	790	Tribal Law & Governance	3.00	3.00	A-

	Att	Earned	Points	GPA	GP Bal
Term Totals:	15.00	15.00	49.80	3.32	19.80
Cumulative Totals:	47.00	47.00	144.50	3.28	56.50

2023 Spring

			Att	Ehr	Grd
LAW	606	Evidence	3.00	3.00	A-
LAW	669	General Practice	3.00	3.00	A
LAW	751	Judicial Externship	6.00	6.00	S
Course Attributes:		Service Learning Course			
LAW	790	Finance & Accting for Lawyers	3.00	3.00	S

	Att	Earned	Points	GPA	GP Bal
Term Totals:	15.00	15.00	23.10	3.85	11.10
Cumulative Totals:	62.00	62.00	167.60	3.35	67.60

Law Career Totals

	Att	Earned	Points	GPA	GP Bal
Cumulative Totals:	62.00	62.00	167.60	3.35	67.60

End of Unofficial Transcript

UNOFFICIAL University at Buffalo Transcript

Name: Marino, Joseph James
Student ID: 5027-1529

Date Issued: 01/10/2022

DEGREE INFORMATION

Degree: Bachelor of Arts
Status: Awarded
Confer Date: 06/01/2021
Degree GPA: 3.925
Degree Honors: Summa Cum Laude
Major: History
Major: Political Science
Sub-Plan: American Politics & Public Affairs

Beginning of UNDERGRADUATE Record

Fall 2018

Program: Arts & Sciences Bachelor
Plan: History
Plan: Intended Political Science
Subplan: American Politics & Public Affairs Concentration

Course		Description	Attempted	Earned	Grade	Points
GEO	106LEC	Global Climate Change	3.000	3.000	A	12.000
HIS	161LR	US History 1	3.000	3.000	A	12.000
HIS	199SEM	UB Seminar	3.000	3.000	A	12.000
Course Topic:		Vietnam War				
PSC	102LEC	Intro Internat Politics	3.000	3.000	A	12.000
PSC	344LEC	Presidential Campaigns	3.000	3.000	A	12.000

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	15.000	15.000	15.000	60.000
Cum GPA	4.000	Cum Totals	15.000	15.000	15.000	60.000

Academic Standing Effective 01/03/2019: Good Standing

Term Honor: Dean's List

Spr 2019

Program: Arts & Sciences Bachelor
Plan: History
Plan: Political Science
Subplan: American Politics & Public Affairs Concentration

Course		Description	Attempted	Earned	Grade	Points
HIS	209LEC	The American Civil War	3.000	3.000	A-	11.010
HIS	301DIS	Historical Writing	3.000	3.000	A	12.000
HIS	302LEC	Latin Amer Colonial His	3.000	3.000	B+	9.990
NTR	108LEC	Human Nutrition	3.000	3.000	A	12.000
NTR	110LAB	Nutrition in Practice	1.000	1.000	A	4.000
PSC	408LLB	Basic Stats for/Soc Sc	4.000	4.000	A	16.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.824	Term Totals	17.000	17.000	17.000	65.000
Cum GPA	3.906	Cum Totals	32.000	32.000	32.000	125.000

Academic Standing Effective 06/04/2019: Good Standing

Term Honor: Dean's List

Fall 2019

Program: Arts & Sciences Bachelor
Plan: History
Plan: Political Science
Subplan: American Politics & Public Affairs Concentration

Course		Description	Attempted	Earned	Grade	Points
AHI	105LEC	Mythology in the Ancient World	0.000	0.000	R	0.000
HIS	240LEC	U.S Alcohol and Drug History	3.000	3.000	A	12.000
PSC	225LEC	Equality & Justice in US	3.000	3.000	A	12.000
PSC	307LEC	Political Parties	3.000	3.000	A-	11.010
PSC	313LEC	Elections & Voting Behavior	3.000	3.000	A	12.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.918	Term Totals	12.000	12.000	12.000	47.010
Cum GPA	3.909	Cum Totals	44.000	44.000	44.000	172.010

Academic Standing Effective 01/03/2020: Good Standing

Spr 2020

Program: Arts & Sciences Bachelor
Plan: History
Plan: Political Science
Subplan: American Politics & Public Affairs Concentration

UNOFFICIAL University at Buffalo Transcript

Name: **Marino, Joseph James**
Student ID: **5027-1529**

Course		Description	Attempted	Earned	Grade	Points
HIS	321LEC	Victorian Hist 1832-1901	3.000	3.000	A	12.000
JLS	132LEC	Local Govt Law & Politics	3.000	3.000	A	12.000
JLS	201LEC	Intro to Law & Legal Proc	3.000	3.000	A	12.000
PSC	303LEC	Constitutional Law	3.000	3.000	A	12.000
PSC	319LEC	Media in Amer Politics	3.000	3.000	A	12.000
PSC	320LEC	Public Opinion	3.000	3.000	A	12.000

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	18.000	18.000	18.000	72.000
Cum GPA	3.936	Cum Totals	62.000	62.000	62.000	244.010

Academic Standing Effective 06/11/2020: Good Standing

Term Honor: Dean's List

Fall 2020

Program: Arts & Sciences Bachelor
Plan: History
Plan: Political Science
Subplan: American Politics & Public Affairs Concentration

Course		Description	Attempted	Earned	Grade	Points
AAS	253LEC	Blacks in Films	3.000	3.000	A	12.000
HIS	346LEC	19c Europe	3.000	3.000	B+	9.990
HIS	446SEM	Topics in Diplomatic His	3.000	3.000	A	12.000
Course Topic:		Human Rights & Humanitarianism				
HIS	497SEM	Honors Thesis 1	3.000	3.000	A	12.000
PSC	224LEC	Politics and Technology	3.000	3.000	A	12.000
PSC	326LEC	War & Int'l Security	3.000	3.000	A	12.000
UBC	399MNT	UB Curriculum Capstone	1.000	1.000	A	4.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.894	Term Totals	19.000	19.000	19.000	73.990
Cum GPA	3.926	Cum Totals	81.000	81.000	81.000	318.000

Academic Standing Effective 01/06/2021: Good Standing

Term Honor: Dean's List

Spr 2021

Program: Arts & Sciences Bachelor
Plan: History
Plan: Political Science
Subplan: American Politics & Public Affairs Concentration

Course		Description	Attempted	Earned	Grade	Points
HIS	379LEC	African Amer 1877 to Pres	3.000	3.000	A	12.000
HIS	409SEM	Voyages of Discovery	3.000	3.000	A-	11.010
HIS	497TUT	Honors Thesis 2	3.000	3.000	A	12.000
PSC	301LEC	Cases in Civil Liberties	3.000	3.000	A	12.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.918	Term Totals	12.000	12.000	12.000	47.010
Cum GPA	3.925	Cum Totals	93.000	93.000	93.000	365.010

Academic Standing Effective 05/27/2021: Good Standing

Undergraduate Career Totals

			Attempted	Earned	GPA Units	Points
Cum GPA:	3.925	Cum Totals	93.000	93.000	93.000	365.010

TRANSFER CREDITS

Transfer Credit from Syracuse University
Applied Toward Arts & Sciences Bachelor

	Attempted	Earned	Points	GPA
Course	10.000	10.000	37.690	3.769
Trans GPA:				

Transfer Credit from SUNY FARMINGDALE STATE COLLEGE
Applied Toward Arts & Sciences Bachelor

	Attempted	Earned	Points	GPA
Course	9.000	9.000	36.000	4.000
Trans GPA:				

TEST CREDITS
Test Credits Applied Toward Arts & Sciences Bachelor Program

	Attempted	Earned	Points	GPA
Test Trans GPA:	9.000	9.000	0.000	0.000

UNOFFICIAL University at Buffalo Transcript

Name: **Marino, Joseph James**
Student ID: **5027-1529**

End of Undergraduate Record

UNLV | WILLIAM S. BOYD SCHOOL OF LAW

UNIVERSITY OF NEVADA, LAS VEGAS

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Joseph Marino for a clerkship in your chambers. He was an active participant in my Professional Responsibility course last fall, and his questions were sophisticated. I also was able to get to know him outside class, as we often spoke about ethics in the practice of law. I have found him to be sharply intelligent, willing to work hard, and extremely kind in his interactions with his fellow students. I believe that he would be a pleasant and useful addition to your chambers, and I'd be happy to answer any questions that you might have.

Very truly yours,

Nancy B. Rapoport
UNLV Distinguished Professor
Garman Turner Gordon Professor of Law, William S. Boyd School of Law
Affiliate Professor of Business Law & Ethics, Lee Business School

nancy.rapoport@unlv.edu
mobile: 713-202-1881

UNLV | WILLIAM S. BOYD SCHOOL OF LAW

UNIVERSITY OF NEVADA, LAS VEGAS

June 20, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am writing this letter of reference in strong support of Joseph Marino's application for a clerkship in your chambers. I have had the pleasure of getting to know Mr. Marino over the last year—both as a student in my Evidence class, and as an active participant in the UNLV William S. Boyd School of Law's governance and student life. Mr. Marino has shown himself to be a dedicated and curious student, and I am confident that he will be an exceptional law clerk and attorney.

Mr. Marino stood out as an attentive and engaged student in our Evidence classroom. Undeterred by the large class size, Mr. Marino frequently sought out individual meetings with me to clarify his understanding of complex concepts, as well as to discuss the serious and challenging issues that inevitably arise during a survey of evidence rules. His written work in the course, both a practice essay and his final examination, show that Mr. Marino has dedicated considerable time to honing his analytical skills.

Mr. Marino is also a committed member of the law school community. By serving as the student representative to our faculty Academic Standards Committee, Mr. Marino has devoted substantial time and energy to enriching students' law school experience. His appointment to that position is some evidence of how Mr. Marino is viewed by his peers and by the faculty.

Finally, Mr. Marino has displayed passion for the essential and important work of the Federal Judiciary. As an extern to the Honorable James C. Mahan, Senior Judge for the U.S. District Court for the District of Nevada, Mr. Marino had the unique opportunity to observe and participate in many of the varied responsibilities entrusted to federal law clerks. He demonstrated maturity and professionalism during his time in Judge Mahan's chambers, and the experience solidified his desire to clerk after graduation.

As I hope I have made clear, I think highly of Mr. Marino. He is an energetic, respectful person who takes pride in his work, and I know he would be an excellent addition to your chambers. I hope this is helpful. Please feel free to contact me if there is any additional information that I might provide.

Sincerely,

Lena Rieke
Assistant Professor of Law & Research Librarian
Lena.rieke@unlv.edu
(702) 895-2430

UNLV | WILLIAM S. BOYD SCHOOL OF LAW

UNIVERSITY OF NEVADA, LAS VEGAS

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is a pleasure to recommend Joseph Marino to you. I came to know Mr. Marino when he took my Securities Regulation course. It's a complex area of law and intimidates many students. Often, students will wait to take it until their third year when they have been able to get other business law courses under their belts. But Mr. Marino was a pleasure to have in class. He picked up the material well and impressed me with his preparation. He pulled a B+ in the course despite never having had business organizations and the class also including a good number of third year students who stood at the top of their class.

His willingness to tackle difficult material and challenge himself speaks well for him. If you were to bring him to your chambers, I'm confident he would be able to quickly pick up the substantive material and deliver high quality work on a consistent basis.

Sadly, our law school will likely be sending Mr. Marino to Richmond Law School on the east coast as a visitor for his third year. I've already reached out to friends on the faculty there to let them know he's coming. They have a deep business law curriculum and some of the nation's finest scholars. I'm confident he'll be extremely well positioned to tackle bankruptcy issues when he graduates.

Mr. Marino is eager to forge relationships in Virginia and sink his roots there. I know he intends to take the Virginia bar and practice there after graduation. Although it would have been wonderful to keep his talent in Nevada, I know his heart and his family live back east.

I recommend him to you without reservation. Please feel free to call me on my mobile phone if you would like any additional information. I'm at (917) 207-4361.

Sincerely,

Benjamin P. Edwards
Associate Professor of Law
University of Nevada, Las Vegas
William S. Boyd School of Law

Box 451003 • 4505 S. Maryland Parkway • Las Vegas, NV 89154-1003 • Tel: 702-895-3671 • Fax: 702-895-2482
www.law.unlv.edu

Joseph J. Marino
300 Shipwright Loop, Apt A103
Williamsburg, Virginia 23188
(516) 639-3907 • josephjamesmarino@gmail.com

Writing Sample

I completed the following appellate brief during my first year of law school for Professor Johnson's class, *Lawyering Process II*. My appellate brief scored in the top 1/3rd of the class.

According to the facts, Ms. Hunter is a former employee of Riverside School. Ms. Hunter taught at Riverside School for two consecutive years until she refused to resign her employment contract. She wanted to teach higher level courses, but Riverside wanted her to continue to keep teaching the same schedule. Ms. Hunter and Mr. Miller, the assistant principal of Riverside School, had a couple of contentious interactions throughout her employment. Mr. Miller made many questionable and off-colored comments. Ms. Hunter never complained or used the proper procedures laid out in the Riverside School Handbook.

For the purposes of this assignment, Professor Johnson placed me on the employer's side in this workplace sexual harassment case, specifically in the role of Riverside School's attorney. This case is on appeal to the Third Circuit of the United States, which is reviewing the grant of the Motion of Summary Judgment. At the District Court level, Riverside School won on a summary judgment motion for the Hostile Work Environment Claim. Therefore, I wrote this appellate brief asking the Third Circuit to affirm the grant of summary judgment.

No. 21-0111

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ELLIE HUNTER,

Plaintiff-Appellant,

v.

Riverside School

Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Pennsylvania
No. 21-0111
Hon. Roberta Parker

APPELLEE'S ANSWERING BRIEF

Student No. 515407
Wilson & Wilson, LLC
205 E. Suit Ave., Steeltown, PA 15022
(412) 555-0000

Attorneys for Appellee

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TABLE OF AUTHORITIES

United States Supreme Court Cases

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JURISDICTIONAL STATEMENT

The United States District Court for the Western District of Pennsylvania had jurisdiction of this case arising under federal law pursuant to 42 U.S.C. § 2000e (2018) under Title VII of the Civil Rights Act of 1964. The federal courts have jurisdiction over this matter because this is a federal question arising under 28 U.S.C. § 1331 (2018). Plaintiff received the "right to sue" from the Equal Employment Opportunity Commission ("EEOC") on or about September 1, 2021. The grant of summary judgment on the hostile work environment claim was entered on January 25, 2022, in favor of Riverside School. Petitioner, Ellie Hunter, filed an appeal on January 25, 2022, and this Court has jurisdiction over the District Court's final judgment pursuant to 28 U.S.C. § 1291 (2018).

STATEMENT OF THE ISSUES

A. Under Title VII of the Civil Rights Act of 1964, does Mr. Miller's mild words and actions reach the heightened standard of severe or pervasive that has been established in previous cases as to Ms. Hunter's hostile work environment claim?

B. Under Title VII of the Civil Rights Act of 1964, is Riverside School entitled to the Faragher-Ellerth affirmative defense because Riverside School can show that no tangible employment action was taken against Ms. Hunter?

STATEMENT OF THE CASE

I. Procedure

On September 7, 2021, Ms. Hunter filed a sexual discrimination in work assignments claim along with a sexual harassment by hostile work environment claim. R. at 3. On October 12, 2021, affidavits were submitted to the district court by Mr. Michael Plotts, Principal of Riverside School, and Mr. Tyree Henry, Superintendent of Riverside School. R. at 6-8.

Ms. Hunter was deposed on November 2, 2021. R. at 15. Mr. Miller was deposed on November 5, 2021. R. at 25. On January 4, 2022, Riverside School made a Motion for Summary Judgment in this matter. R. at 38. The district court granted Riverside's Motion for Summary Judgment on the sexual harassment – hostile work environment claim on January 25, 2022. R. at 40. This Court is being asked to review the grant of the Motion of Summary Judgment by the District Court for the Western District of Pennsylvania.

II. Facts

Plaintiff, Ellie Hunter (Ms. Hunter) is a former employee of Riverside School, a private high school. R. at 38. Ms. Hunter began her employment as a teacher at Riverside School in August 2019. She was hired based on her impressive credentials that included graduating *cum laude* from Iowa State University and for being certified to teach high school mathematics course in Pennsylvania, including specifically developmental courses. R. at 2.

Ms. Hunter taught at Riverside School for two consecutive years until she quit, teaching from June 2019 to May 2021. Ms. Hunter's immediate supervisor was Mr. Scott Miller, Vice Principal of Riverside School. R. at 2. Even though Mr. Miller was Ms. Hunter's immediate supervisor, Mr. Miller did not sign her checks nor had the authority to terminate Ms. Hunter. R. at 23. Michael Plotts is the Principal of Riverside School and Tyree Henry is the Superintendent of Riverside School. R. at 6-8. The only three names on Ms. Hunter's employment contracts were Ellie Hunter, Michael Plotts, and Tyree Henry. R. at 12-14.

For both years of her employment at Riverside School, Ms. Hunter taught three sections of Algebra I and one section of the two developmental mathematics courses, Mathematics Fundamental I and Mathematics Fundamental II. R. at 3. Following the success of her teaching those classes, Riverside School happily gave Ms. Hunter an Offer of Continue Employment for

the 2021/2022 school year to teach the same classes. R. at 14. They wanted her to stay on the faculty and continue helping students with their mathematical skills at Riverside School. However, Ms. Hunter always had more interest in teaching higher level courses. She wanted Mr. Miller to follow through on his subtle promise that she would get to teach higher level courses after she was more experienced. R. at 39.

Ms. Hunter and Mr. Miller had a couple of contentious interactions throughout her employment. Mr. Miller told Ms. Hunter one time in regard to her teaching lower-level courses that "women do better teaching the young kids and the slower kids." R. at 3. Mr. Miller also made other comments such as "women are nurturers" and a comment along the line of embracing her gender and not to fight it. R. at 3. During Ms. Hunter's first semester at Riverside School, Mr. Miller referred to her as a "pretty little thing" in front of another co-worker, Carol Baker, a school counselor. R. at 17. Ms. Baker never reported the incident or checked in on Ms. Hunter after the comment. Also, Mr. Miller commented about males in Ms. Hunter's math classes not being able to learn because they were too busy fantasizing about Ms. Hunter. R. at 4. Furthermore, Mr. Miller made comments that Ms. Hunter would be "too distracting" to the older boys in relation to their conversations about her teaching upper-level math classes. R. at 4.

In February 2021, Ms. Hunter and Mr. Miller had a meeting in his office. R. at 39. During this meeting, Ms. Hunter expressed her displeasure with some of his, in her opinion, distasteful comments. Mr. Miller told Ms. Hunter that she "had a problem with men" and that her supervisors were men, so she better get over it. R. at 39. After Ms. Hunter requested that Mr. Miller behave more professionally, Mr. Miller decided to speak to Ms. Hunter only when necessary, in order to avoid any other misunderstandings. R. at. 39.

Riverside School has an extensive sexual harassment policy. R. at 11. Furthermore, the policy contains the school's no-tolerance position. The policy goes on to define and prohibit sexual harassment and described possible disciplinary actions for violations of the policy. R. at 39. Most importantly, Riverside School's sexual harassment policy describes the specific procedure by which an employee should report such harassment. R. at 11.

Ms. Hunter never complained to Mr. Plotts about sexual harassment by anyone at Riverside School, including Mr. Miller. R. at 6. It was not until June 9, 2021, that Ms. Hunter came to Mr. Plotts office to inform him that she filed a complaint with the Equal Opportunity Commission. R. at 6. This was Mr. Plotts's first time of hearing about her experience at Riverside School. R. at 6. Mr. Henry also was not notified of any complaint by Ms. Hunter until after she talked to Mr. Plotts on June 9, 2021.

Riverside School completed an extensive investigation. The members of the math department and support staff who worked with Mr. Miller were interviewed. R. at 6. No other members of the staff alleged any type of harassment by Mr. Miller. R. at 6. Discipline for Mr. Miller was deemed to be unnecessary after the completion of the intrusive investigation. Ms. Hunter's employment at Riverside School officially ended on May 31, 2021.

SUMMARY OF THE ARGUMENT

This case is solely about the ordinary tribulations of the workplace. Ms. Hunter is trying to turn mild comments into a sexual harassment claim that has no basis in the law under 42 U.S.C. § 2000e-2(a) (2018). Ms. Hunter is upset she did not get the exact classes she wanted to teach at Riverside School. That is why she never reported any of the alleged incidents to anyone. If Ms. Hunter was extremely offended, or if the comments were severe or pervasive under the *Breeden* and *Moody* standard, then Ms. Hunter or another witness who overheard them would

have reported it using the robust grievance procedure Riverside School has for dealing with these situations. Appellant is asking this court to drastically lower the severe or pervasive standard which will make every normal tribulation or interaction in a workplace a basis for a sexual harassment – hostile work environment claim. This lower standard that Ms. Hunter is asking for will overload the court system with baseless claims of hostile work environment and take away from the important sexual harassment cases which need immediate court intervention and judicial remedy.

Under this Court and the Supreme Court's precedents outlined below, Ms. Hunter does not have a valid hostile work environment claim because the comments made by Mr. Miller do not constitute sexual harassment and there is no basis for employer liability. Riverside School never took an adverse employment action against Ms. Hunter. On the contrary, Riverside School gave Ms. Hunter continuing offers of employment along with yearly raises. Most people would not consider that a negative employment action. Ms. Hunter was simply upset she did not get to teach the classes she wanted. She is a new teacher with very little seniority. Furthermore, not even the most senior teachers get to pick what classes they teach year-to-year. That is up to the administration of Riverside School. Furthermore, there was no change whatsoever to Ms. Hunter's employment. She started her time at Riverside School by teaching one section of Mathematic Fundamentals I, one section of Mathematic Fundamentals II, and three sections of Algebra I. In her most recent offer before Ms. Hunter quit, she was going to teach the exact same schedule. There was going to be no negative change in her schedule. Most teachers' classes do not change drastically year-to-year, especially those teachers who are new in the school.

Ms. Hunter will not be able to prove that Mr. Miller's words and actions were severe or pervasive and that there was an adverse employment action taken against her. Furthermore, Riverside School will be able to show that they are entitled to the Faragher-Ellerth affirmative defense. Therefore, this Court should uphold the grant of summary judge by the district court as there is no genuine issue of material fact and Riverside School is entitled to a judgment as a matter of law.

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE GRANT OF SUMMARY JUDGMENT FOR RIVERSIDE SCHOOL BECAUSE MS. HUNTER DID NOT ENDURE A HOSTILE WORK ENVIRONMENT AS MR. MILLER'S WORDS DID NOT RISE TO THE LEVEL OF SEVERE OR PERVASIVE AND THERE IS NO BASIS FOR EMPLOYER LIABILITY.

The Court of Appeals for the Third Circuit reviews a district court's grant of summary judgment *de novo* and applies the same standard as the District Court. *Mandel v. M & Q Packaging Corp.*, 706 F.3d 157, 164 (3d Cir. 2013). On a motion for summary judgment, the court views "the facts in the light most favorable to the nonmoving party." *Id.* A grant of summary judgment is valid if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a).

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin. 42 U.S.C. § 2000e-2(a) (2018). Specifically, it is an unlawful employment practice for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1).

The Supreme Court has held that Title VII does not prohibit "genuine but innocuous differences in the ways men and women routinely interact with members of the same sex and the

opposite sex." *Faragher v. City of Boca Raton*, 545 U.S. 775, 788 (1998). Furthermore, the Court stated that "these standards for judging hostility are sufficiently demanding to ensure that Title VII does not become a "general civility code." *Id*. When the standard for severe or pervasive is properly applied, it will filter out complaints attacking "the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing." *Id.*

Title VII prohibits sexual harassment that "is sufficiently severe or pervasive to alter the condition of the plaintiff's employment and create an abusive working environment." *Mandel,* 706 F.3d at 167. The trial court consolidated elements of the standard hostile work environment test. Therefore, for a plaintiff to win a hostile work environment claim, they must show that (1) the employee suffered intentional discrimination because of her sex; (2) the employee suffered harassment severe or pervasive enough to alter the conditions of her employment and create an abusive working environment; (3) the discrimination detrimentally affected the plaintiff; (4) there exists a basis for employer liability. R. at 40.

Riverside School concedes that the comments made by Mr. Miller were based on sex. Furthermore, the trial court ruled that the record supports Ms. Hunter's claims that she was detrimentally affected by Mr. Miller's comments. However, the comments made by Mr. Miller did not rise to the level to be severe or pervasive enough to alter the conditions of Ms. Hunter's employment and create an abusive working environment. Furthermore, there is no basis for liability on behalf of Riverside School because there was no tangible employment action. Also, Riverside School exercised reasonable care to prevent and promptly correct any sexually harassing behavior, and Ms. Hunter unreasonably failed to take advantage of any preventive or corrective opportunities provided or to avoid harm otherwise. Thus, Ms. Hunter cannot raise a genuine issue of material fact. Therefore, summary judgment should be affirmed.

A. Mr. Miller's mild workplace comments and actions were not severe or pervasive enough to alter the conditions of Ms. Hunter's employment and create an abusive working environment; therefore, summary judgment should be affirmed.

In determining whether a work environment is hostile or abusive, the situation must be judged by "looking at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere utterance; and whether it unreasonably interferes with an employee's work performance." *Clark County School Dist. v. Breeden*, 532 U.S. 268, 271 (2001). In a hostile work environment claim, the harassment must be so severe or pervasive as to alter the conditions of the employee's employment and create an abusive working environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 67 (1986). The Supreme Court has stated that "simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'" *Faragher*, 545 U.S. at 788. In order for a hostile work environment claim to proceed to trial, the situation must be severe or pervasive, such as forcible sexual favors or vile statements that consistently happen over time.

The Supreme Court has held that extreme situations, like the one that occurs in *Vinson*, may constitute a claim for sexual harassment. *Vinson*, 477 U.S. at 60. In *Vinson*, the employee was invited to dinner by her supervisor. *Id*. During dinner, the supervisor invited her to a local motel to have sexual relations. *Id*. The employee feared she was going to lose her job, so she agreed to his sexual advances. *Id.* The sexual relations between the employee and supervisor continued, as the supervisor usually demanded sexual favors during and after business hours. *Id.* Over the next couple of years, the employee stated that she had intercourse with the supervisor around 40 or 50 times. *Id.* Furthermore, the supervisor fondled her in front of her co-workers, followed her into the women's restroom where he exposed himself, and even forcibly raped her several times. *Id.*

The Court has held that the sexual harassment allegations must be so severe or pervasive and go beyond simple joking and teasing. *Breeden,* 532 U.S. at 269. In *Breeden*, a female employee's male supervisor and another male employee were joking about the comment "I hear making love to you is like making love to the Grand Canyon." *Id*. The Court repeatedly mentioned that the harassing conduct must be so severe or pervasive that it produces "a constructive alteration in the terms or conditions of employment." *Id*. at 270. The Court in this case held that this single situation did not rise to the level of severe or pervasive. *Id.*

However, this Court in *Moody* found that a reasonable juror could conclude there was severe harassment from the treatment Moody faced. *Moody v. Atlantic City Board of Education,* 870 F.3d 206, 215 (3d Cir. 2017). Moody alleged that her supervisor made sexually charged comments to her and grabbed her on a few occasions. *Id.* Moody also claimed that Marshall called her into his office, and he was sitting naked on a chair. *Id.* The supervisor also attempted to remove the female employee's shirt. *Id.* Finally, on another occasion, Marshall asked Moody if he was "getting all three holes" and showed up to her house uninvited and pressured Moody into having sexual intercourse with him. *Id.*

The Supreme Court in *Harris* held that comments and actions must offend the reasonable woman in order to bring a successful hostile work environment claim for sexual harassment. *Harris v. Forklift Sys., Inc.,* 510 U.S. 17, 19 (1993). *In Harris*, the supervisor would make comments to the female employee, such as: "You're a woman, what do you know", "we need a man as the rental manager", "a dumb ass woman", and "[lets] go to the Holiday Inn to negotiate Harris's raise." *Id.* The supervisor also asked the female employee, Harris, to get coins from his front pants pocket and he threw objects on the ground so that she would pick them up. *Id.* The Court stated that the standard for a hostile work environment claim requires an "objectively"

hostile or abusive environment and consideration of all the circumstances, not any one factor. *Id*. at 23.

Here, Mr. Miller's comments do not come close to the cases where the Court has held it is a possibility for a juror to find that the comments and actions are severe or pervasive. Mr. Miller's comments, such as "women do better at teaching the young kids and the slower kids," does not equate to the level in *Harris* where the supervisor called a female employee "a dumb ass woman" or told the employee to "go to the Holiday Inn to negotiate Harris's raise." Even Mr. Miller's comments, that "women are nurturers," is not severe or pervasive, as this is something that is talked about in high school and collegiate sociology classes. Simply, it was a private conversation that often happens between men and women who have tough conversations surrounding the power struggle between the sexes. Mr. Miller wanted Ms. Hunter to listen more, and Ms. Hunter wanted Mr. Miller to let her speak more. At most, Ms. Hunter and Mr. Miller engaged in the ordinary tribulations of the workplace.

Ms. Hunter was never inappropriately touched, nor did she receive requests for sexual favors like in *Vinson*. Between Ms. Hunter and Mr. Miller, there was no extreme situations, such as forcible rape or exposing private parts, which occurred in *Vinson*. Mr. Miller's comments, such as "pretty little thing" or the fact that Ms. Hunter would be "too distracting" to the older boys, hardly reached the level of severity set out in *Moody*, where the female employee was grabbed, walked in on the supervisor naked, and had the supervisor show up to her house begging for her "three holes." No new sexual comments or actions are alleged during the incident when Mr. Miller shut the door to his office so he could have a private meeting with Ms. Hunter.

Furthermore, Mr. Miller's comments did not alter the conditions of Ms. Hunter's employment, and certainly did not create an abusive work environment for Ms. Hunter, as the

Court laid out in *Breeden*. Like in *Breeden*, Mr. Miller's comments were merely teasing, offhanded comments that were more isolated incidents than a pattern of sexual harassment. Upon analyzing the circumstances surrounding Mr. Miller and Ms. Hunter's interactions, it seems clear that there were not enough severe and frequent comments or actions that were physically threatening or humiliating that interfered with Ms. Hunter's work performance.

B. Riverside School is not vicariously liable because Ms. Hunter suffered no tangible job consequence, Riverside School took reasonable care to prevent Mr. Miller's behavior, and Ms. Hunter unreasonably failed to avoid harm.

An employer is only subject to vicarious liability for an actionable hostile work environment created by a supervisor with immediate or successively higher authority over the employee. *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 765 (1998). If the harassed employee suffered no tangible employment action, then the employer can avoid liability by asserting the Faragher-Ellerth affirmative defense. *Minarsky v. Susquehanna Co.*, 895 F.3d 303, 310 (3d Cir. 2018). Furthermore, the employer affirmative defense requires the employer to show that: (1) they [the employer] exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided or to avoid harm otherwise. *Ellerth*, 524 U.S. at 765. Furthermore, the Court has held that "Title VII does not make employer always automatically liable for sexual harassment by their supervisors." *Faragher*, 545 U.S. at 792.

The Court should find that Ms. Hunter did not suffer an adverse employment action; therefore, Riverside School is entitled to the Faragher-Ellerth affirmative defense which protects Riverside School from any liability due to the conduct of our employee, Mr. Miller.

BI. Ms. Hunter was not fired, demoted, or reassigned with significantly different responsibilities so therefore, Ms. Hunter did not suffer a tangible employment action.

A tangible or adverse employment action is defined as a "materially adverse change in the terms and conditions" of employment. *Ellerth*, 524 U.S. at 765. Furthermore, the Supreme Court has held that, "[a] tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibility, or a decision causing a decision causing a significant change in benefits." *Id.* at 761. Also, the Court states that "a tangible employment action in most cases inflicts direct economic harm." *Id.* A tangible employment action requires a firing or negative reassignment that causes an unwelcomed change in their work schedule and a negative impact on the individual's pay.

If an employee is given fewer shifts or their work schedule changes in a negative way, then that could constitute as an adverse employment action. In *Moody*, there was an economic impact from the tangible employment action taken by the supervisor against the employee. *Moody*, 870 F.3d at 217. Once the employee rejected the supervisor's advances, she was given fewer and fewer shifts at her employment. *Id.* This was a direct economic impact on the employee. In *Jones*, this Court found that a suspension with pay does not even constitute an "adverse employment action" under Title VII. *Jones v. Southeastern Pa. Transp. Authority*, 796 F.3d 323, 324 (3d Cir. 2015).

Here, Ms. Hunter was neither fired, demoted, or received a negative change in benefits. Unlike in *Moody*, Ms. Hunter did not suffer an economic harm in any way because she was not given fewer classes and her work schedule did not change in a negative way. Also, Ms. Hunter did not suffer any employment action, let alone something as serious as suspension with pay which was still not considered a tangible employment action in *Jones*. Ms. Hunter's legal team might assert that she was not promoted and therefore that was the adverse employment action.

However, that is the exact opposite of the truth. Every year up until Ms. Hunter quit, she received new offers of employment along with yearly raises. An increase in salary is usually considered a promotion to most people.

However, Ms. Hunter might state that the failure of promotion came from the fact that she was not assigned different classes. Nevertheless, a difference in class assignments is not usually celebrated as a promotion. It would seem out of the ordinary to celebrate the change from teaching Algebra I to Geometry I, or even Pre-Calculus, as a "promotion." Math is math. So, to a mathematician, teaching a different type of math would not be a promotion, it would just be a different area of your specialized field. In a lot of schools, the highest-seniority, longest-serving, and advanced teachers teach the core basics like Algebra as they are the most important to establishing the mathematical fundamentals. Those advanced teachers would hardly say that they are not being promoted because they are teaching the same core important classes.

BII. Riverside School has an extensive anti-sexual harassment policy in the employee handbook which proves that the employer exercised reasonable care.

The Supreme Court has held that it is not even necessary in every instance as a matter of law that an employer has an anti-harassment policy with a complaint procedure. *Ellerth*, 524 U.S. at 765. Thus, "the existence of a functioning anti-harassment policy could prove the employer's exercise of reasonable care so as to satisfy the first element of the affirmative defense." *Minarsky*, 895 F.3d at 311. Furthermore, "[t]he cornerstone of this analysis is reasonableness: the reasonableness of the employer's preventative and corrective measures, and the reasonableness of the employee's efforts (or lack thereof) to report misconduct and avoid further harm." *Id*. This Court has also stated that these standards set forth to strike the correct balance between "protecting the rights of the employee and the employer by faulting the employer for turning a blind eye to overt signs of harassment but not requiring it to attain a level of omniscience, in the

absence of actual notice, about all misconduct that may occur in the workplace." *Kunin v. Sears Roebuck and Co.*, 175 F.3d 289, 294 (3d Cir. 1999). Furthermore, this Court has also stated that "a showing that discipline was imposed is not required to prove than an employer's remedial action was adequate." *Knabe v. Boury Corp.*, 114 F.3d 407, 413 (3d Cir. 1997).

If there is no reasonable way for the employer to be aware of the alleged harassment, then the employer cannot be held liable. In *Kunin*, there was a limited number of interactions between the supervisor and the employee, therefore, this Court found that "Sears' management had little opportunity to discover the harassment absent Kunin's giving the company actual notice." *Id.* at 295. Also, this Court found that Sears acted reasonably because the harassment in this case was not of the kind that would have been easily discoverable by Sears' management. *Id.* The supervisor made derogatory remarks to Kunin personally, but at times when management was not within hearing range. *Id.* Due to Kunin not being able to prove employer liability, this Court ruled that her sexual harassment claim failed against Sears. *Id.*

This Court has held that an effective grievance procedure protects an employer from hostile work environment liability. In *Bouton*, this court held that the availability of an effective grievance procedure protected employers from Title VII liability for a hostile work environment claim. *Bouton v. BMW of North America, Inc.*, 29 F.3d 103, 110 (3d Cir. 1994). This Court did say, however, that an employer is liable for sexual harassment if they know or should have known and field to take proper remedial action. Id. at 107.

Here, Riverside School has a robust sexual harassment policy and grievance procedure, which goes beyond the standard set forth in *Ellerth*. The policy clearly states the school's position; that it will not tolerate any forms of sexual harassment. Furthermore, our policy lays out extensively all the ways sexual harassment may take various forms. If a member of the

faculty believes that they have been harassed, we lay out the procedure to notify his or her supervisor in the employee manual that is signed, as an addition to an employment contract with Riverside School. In this case, Ms. Hunter's alleged harasser is her supervisor, vice principal, Mr. Miller. However, we clearly state that "[i]f the employee's immediate supervisor is the source of the alleged harassment, … then the employee should report the problem to the supervisor's supervisor, the principal of Riverside School, or the superintendent." R. at 11. Furthermore, like in *Kunin,* the comments made by Mr. Miller would not have been easily discoverable by Riverside School. Riverside School was never aware of any complaints about Mr. Miller from Ms. Hunter or anyone else on the faculty. This situation was solely between Mr. Miller and Ms. Hunter, and therefore, Riverside School, maintained reasonable care under the circumstances. Riverside School never turned a blind eye to the situation because they never had an eye on it to begin with.

BIII. Ms. Hunter did not follow the sexual harassment procedure set up by Riverside School's Employee Manual, therefore, Ms. Hunter unreasonably failed to act appropriately and avoid harm.

The Supreme Court also has held that an employee's failure to fulfill the obligation of reasonable care to avoid harm is not limited to showing any unreasonable failure to use any complaint procedure by the employer. *Ellerth*, 524 U.S. at 765. Furthermore, the demonstration of failing to complain will normally suffice to satisfy the employer's burden under this second element of the affirmative defense. *Id.* Also, this Court has stated that "any sensible employee would surely go to the EEO (office) route instead of complaining only to the very person committing the harassment." *Jones*, 796 F.3d at 329. In *Minarsky*, this Court did expand this prong of the affirmative defense that just failure to report was not enough, however, they did say it is highly fact specific. *Minarsky*, 895 F.3d at 314.

In *Minarsky*, the employee's failure to report was influenced by many forces. First, she feared the day-to-day hostility from her supervisor, potential retaliation by having her fired, worried about being terminated by the Chief Clerk, and the futility of reporting, since other attempts to report him were unsuccessful. *Id.* The female employee in this case also faced an extreme financial situation with her daughter's cancer treatment. *Id.*

Ms. Hunter did the very thing outlined in *Jones.* She only complained to Mr. Miller, himself. Ms. Hunter never reported any of the comments or incidents to anyone at Riverside School. She also never mentioned any negative relationship with Mr. Plotts, Principal of Riverside School, nor Mr. Henry, Superintendent of Riverside School. There should have been no issue with Ms. Hunter going to one or both, to tell them about the allegations. Due to Mr. Plotts or Mr. Henry never hearing from Ms. Hunter about the incidents, they could not have possibly taken remedial action, even though that would not have been required of Riverside School to show reasonable care. Also, Ms. Hunter's situation is nowhere close to the employee in *Minarsky*, as she did not have an extraordinary fear of being terminated or of retaliation. Ms. Hunter does not have a serious financial burden, it seems, that would make her have a great fear of being fired. Furthermore, Mr. Miller does not have any history of past incidents or allegations, let alone incidents that have gone unpunished.

CONCLUSION

Ms. Hunter did not suffer from a hostile work environment due to sexual harassment during her employment at Riverside School. Respectfully, this Court should not lower the severe or pervasive standard that has been the precedent for decades. Ms. Hunter interactions with Mr. Miller are, at most, ordinary tribulations of the workplace. Furthermore, there was no tangible employment action taken against Ms. Hunter as she was given continuing offers of employment

with yearly raises. Riverside School's robust sexual harassment policy has a well laid-out grievance procedure which shows that Riverside School demonstrated reasonable care under the circumstances and there was no way for Riverside School to be aware of private incidents between Mr. Miller and Ms. Hunter. Furthermore, Ms. Hunter's failure to utilize the grievance procedure shows that she unreasonably failed to act appropriately and avoid harm. Therefore, this Court should affirm the district court's grant of summary judgment for Riverside School because Ms. Hunter did not endure a hostile work environment as Mr. Miller's words did not rise to the level of severe or pervasive and there is no basis for employer liability.

Applicant Details

First Name	**Alexis**
Middle Initial	**J.**
Last Name	**Marvel**
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Contact Phone Number	**617-999-8372**

Applicant Education

BA/BS From	**University of Massachusetts-Boston**
Date of BA/BS	**December 2020**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 19, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**The Georgetown Law Journal**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year law student in the top 10% of my class at Georgetown University Law Center, where I serve as Editor-in-Chief of *The Georgetown Law Journal*. Proudly, I am the first in my family to obtain a post-secondary degree. I am writing to apply for a 2024–2025 term clerkship in your chambers, or any subsequent term you may have available.

Both during and prior to law school, I have engaged in diverse experiences to attain strong professional, analytical, and advocacy skills. As Editor-in-Chief of Georgetown's main law review, I manage a team of approximately 120 editors and staff, guide the selection of content for publication, and meticulously proof our six-issue volume to ensure technical accuracy and stylistic precision. After participating in my First Year Competition, I was selected to be a member of the Moot Court Board and a Vice Chair of the Global Antitrust Institute Invitational—the only moot court competition in the country to focus entirely on antitrust law. Prior to law school, I worked in corporate public affairs for eight years, where I set the strategic direction of our campaigns and was responsible for client-facing memoranda and public-facing editorial content.

Some of my most valuable experiences in law school involve serving the public interest. Last summer, I interned for the Judge-in-Chambers Courtroom in the Superior Court of the District of Columbia, where I reviewed materials for pro se litigants seeking emergency protective orders and preliminary injunctions. Last fall, I externed for Judge Paul Friedman in the U.S. District Court for the District of Columbia, where I contributed to the work of chambers by producing bench memoranda and portions of a draft opinion during two major jury trials. As Editor-in-Chief of the *Journal*, I also oversee the production of our *Annual Review of Criminal Procedure*, an accessibly written topic-by-topic summary of federal criminal procedure used by the Department of Justice, judges, and pro se litigants alike. Next spring, I will serve as one of eight student counsel in Georgetown's Appellate Courts Immersion Clinic, which handles public interest cases in federal circuits and the Supreme Court.

I am thrilled at the opportunity to submit this application and for the chance to support the work of your chambers. Judge Friedman (D.D.C.) welcomes calls regarding my candidacy and may be reached in chambers at (202) 354-3490. Please find attached my résumé, law school transcript, writing sample, and letters of recommendation from the following professors:

Professor Paul F. Rothstein
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Professor Michael Pardo
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Professor Victoria Walker
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Thank you very much for your time and consideration.

Respectfully,

Alexis Marvel

ALEXIS MARVEL

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EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER, Washington, DC
J.D. expected, May 2024
GPA: 3.88 (top 10%)
Honors: Editor-in-Chief, *The Georgetown Law Journal*
Dean's List, 2022–2023
Select Courses: A in Evidence, Advanced Evidence, Administrative Law, Constitutional Law I
Federal Courts expected, Fall 2023

GEORGE MASON UNIVERSITY LAW SCHOOL, Arlington, VA
First-year J.D. coursework completed, May 2022
Honors: Selected for Moot Court Board, Global Antitrust Institute Invitational Vice Chair
Select Courses: A+ in Legal Writing I and II

UNIVERSITY OF MASSACHUSETTS, Boston, MA
B.A. in Political Science, December 2020 (attended 2011–2015)
Activities: Student Body President
Student Trustee

EXPERIENCE

GEORGETOWN APPELLATE COURTS IMMERSION CLINIC, Washington, DC Spring 2024
Prospective Student Counsel.

MILBANK, New York, NY Summer 2023
Summer Associate, Litigation Track. Researching and drafting memoranda for matters involving antitrust, bankruptcy, criminal possession and conspiracy, and the Federal Tort Claims Act. Reviewing documents in discovery for a pro bono matter involving a father and daughter separated at the border under the Trump Administration. Observing depositions.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, Washington, DC Fall 2022
Extern to the Honorable Paul L. Friedman. Drafted opinion interpreting federal statutes on a motion to dismiss. Composed two bench memoranda advising on proposed jury instructions and Rule 615. Drafted three parts of opinion analyzing hearsay, public authority defense, and inference relating to defendant's conduct. Crafted portion of a sentencing memorandum. Cite checked *Daubert* opinion. Observed two jury trials, one civil and one criminal.

DISTRICT OF COLUMBIA SUPERIOR COURT, Washington, DC Summer 2022
Intern to the Judge-in-Chambers Courtroom. Drafted memoranda for several judges analyzing emergency civil matters, including temporary protective orders and preliminary injunctions. Observed, on average, eight to twelve hearings each day.

DDC PUBLIC AFFAIRS, Washington, DC 2017–2021
Senior Associate Vice President. Led national political advocacy campaigns for clients, including Amazon and CVS Health. Drafted client-facing memoranda, pitch decks, editorial content, press releases, and campaign materials.

FIVE CORNERS STRATEGIES, Boston, MA/Washington, DC 2013–2017
Senior Director. Led projects and grew client base within multiple industries, including renewable energy and land use. Crafted and executed campaign strategies across several states.

GENERAL COURT OF MASSACHUSETTS, Boston, MA Spring 2013
Intern to (Former) State Representative Marty Walsh. Drafted legislation concerning student trustee voting rights on the Board of Trustees for the University of Massachusetts.

COMMUNITY

Taught ballet and jazz to children in ten countries and seven states. Girls on the Run coach.

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Alexis J. Marvel
GUID: 819735570

Course Level: Juris Doctor

Transfer Credit:
George Mason University
School Total: 30.00
Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	004	09	Constitutional Law I: The Federal System Susan Bloch	3.00	A	12.00	
LAWJ	1491	07	Externship I Seminar (J.D. Externship Program) Deborah Carroll		NG		
LAWJ	1491	131	~Seminar Deborah Carroll	1.00	A-	3.67	
LAWJ	1491	133	~Fieldwork 3cr Deborah Carroll	3.00	P	0.00	
LAWJ	1533	05	Civil Discovery in Federal Courts Serafina Concannon	3.00	A	12.00	
LAWJ	165	02	Evidence Michael Pardo	4.00	A	16.00	
LAWJ	1663	05	The Federal Courts and the World Seminar: History, Developments, and Problems Kevin Arlyck	2.00	A-	7.34	

In Progress:

	EHrs	QHrs	QPts	GPA
Current	16.00	13.00	51.01	3.92
Cumulative	46.00	13.00	51.01	3.92

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	025	05	Administrative Law	3.00	A	12.00	
LAWJ	1322	05	Civil Rights Statutes and the Supreme Court Seminar	2.00	A-	7.34	
LAWJ	168	07	Advanced Evidence: Supreme Court and the Constitution Seminar	3.00	A	12.00	
LAWJ	215	08	Constitutional Law II: Individual Rights and Liberties	4.00	A-	14.68	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	12.00	12.00	46.02	3.84
Annual	28.00	25.00	97.03	3.88
Cumulative	58.00	25.00	97.03	3.88

End of Juris Doctor Record

Academic Transcript

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Institution Credit Transcript Totals

Transcript Data

STUDENT INFORMATION

Name : Alexis J. Marvel

Curriculum Information

Current Program

Juris Doctor

College: Antonin Scalia Law School

Major: Law

This is NOT an Official Transcript

INSTITUTION CREDIT -Top-

Term: Fall 2021

Term Comments: Class standing: 37/262 (tie)

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	096	LW	Intro to Lgl Res Writ &	A+	2.000	8.66	
LAW	102	LW	Contracts I	A	2.000	8.00	
LAW	104	LW	Property	A-	4.000	14.68	
LAW	108	LW	Economics for Lawyers	A	3.000	12.00	
LAW	110	LW	Torts	B+	4.000	13.32	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	56.66	3.78
Cumulative:	15.000	15.000	15.000	15.000	56.66	3.78

Unofficial Transcript

Term: Spring 2022

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	097	LW	Trial-Level Writing	A+	3.000	12.99	
LAW	103	LW	Contracts II	B+	3.000	9.99	
LAW	106	LW	Criminal Law	B+	3.000	9.99	
LAW	112	LW	Civil Procedure	B+	4.000	13.32	
LAW	266	LW	Legislation & Statutory Interp	B	2.000	6.00	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	52.29	3.49
Cumulative:	30.000	30.000	30.000	30.000	108.95	3.63

Unofficial Transcript

TRANSCRIPT TOTALS (LAW) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	30.000	30.000	30.000	30.000	108.95	3.63
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	30.000	30.000	30.000	30.000	108.95	3.63

Unofficial Transcript

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to strongly recommend Alexis Marvel for a position in your chambers. She truly lives up to her last name. She has been elected Editor-in-Chief of our top law review (the *Georgetown Law Journal*), has almost a straight "A" record in law school, and has numerous high level activities outside of law school, including clerking for a really excellent federal trial judge I know personally who thinks very highly of her, as I do.

She is a few years older than the average law student. I point this out because you will not know this from looking at her if you interview her, and may find her amazing history of high level work before law school to be incredible for one so young.

Her story, as I understand it, is inspiring. At eighteen years old, after growing up in Massachusetts, she spent three years traveling the world in a performing arts group based in California called "The Young Americans" which involved dancing and music and several national and international tours. In connection with this group, in addition to performing, she taught song and dance to kids in seven states and ten countries, including children in juvenile detention, some of whose lives, I am told, were transformed by this.

At twenty-three years old, still in her third year of undergrad, I understand she took a job with a political consulting firm that eventually launched her eight-year career managing multi-state campaigns for corporate clients. I am told that this group was so impressed with her that outside of her salary, they helped finance her school tuition. At times, she was shuttling between work and classes. She seems to be able to multitask very successfully. For example, she is married, with a young child, yet, I understand, she has almost single-handedly taught him to read, while she was also grading high in law school and working on the law journal, even becoming its editor-in-chief.

I am told she is the first in her family to go to college. She is a transfer student, here at Georgetown Law, from George Mason law school, where she also graded very high (e.g. receiving A+'s in Legal Writing both semesters there).

At Georgetown Law she has been one of eight students selected for Georgetown's Appellate Courts Immersion Clinic next spring. In my class (a small Advanced Evidence writing-and-class-sessions seminar) she produced an excellent semester long, multiple draft research paper concerning a proposed parent-child privilege, which paper was presented orally and in writing several times to me and the other students as the drafts progressed over the semester. She is very intelligent, articulate, poised, and a really good researcher and writer. In other words, I came to appreciate why she was elected editor in chief following her earlier work with others on the law journal.

She has told me that she especially enjoyed working through all the evidentiary issues in the two jury trials she observed while she was with the judge. She has said "What I loved most about my D.D.C. internship is also what I would get to do more of at the appellate level—grappling with thorny issues of law, and the work of researching and writing. I do plan to go into 'BigLaw' for a few years after clerking, in litigation (ideally appellate work). I'll likely want to shift to academia or government work once I've paid off my loan debt and create some savings for my family."

Personally, I think you could not go wrong in hiring Alexis. In addition to all her other qualities, she is very personable and excellent to work with. She got along really well with the group of fellow students in my seminar even though part of her job (in common with the other students) was to help fellow students perfect their papers by pointing out where more work was needed. She did this extremely well, in the most incredibly effective yet nice way imaginable. She was a favorite of, and valued by, all the students.

Please do not hesitate to contact me if I can provide any more information. I will be pleased to do so.

Kindest regards,

/s/
Paul Rothstein
Carmack Waterhouse Professor of Law

Rothstein Paul - Paul.Rothstein@law.georgetown.edu - 202.662.9094

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to strongly recommend Alexis Marvel for a clerkship position in your chambers. Ms. Marvel is currently a 2L at Georgetown University Law Center, where she has an outstanding GPA and is currently the Editor-in-Chief of *The Georgetown Law Journal*. My recommendation and my knowledge of Ms. Marvel's legal skills are based primarily on her excellent performance in my Evidence course in the Fall 2023 semester. In this letter, I will focus on Ms. Marvel's performance in, and positive contributions to, this Evidence course and then briefly discuss other details that in my opinion make her an excellent clerkship candidate.

Ms. Marvel was a student in my Evidence course this past fall semester. The course was a large lecture class (124 students) that focused on evidence doctrine, with a particular focus on the *Federal Rules of Evidence*. In terms of both in-class participation and performance on the final exam, Ms. Marvel was a clear standout. The format of the class was largely problem-based, with class discussions focused on applying the law of evidence to hypothetical scenarios. In this large class, Ms. Marvel made regular, positive contributions. When called on during class, her contributions analyzing evidentiary issues displayed a strong understanding of the nuances of evidence doctrine. She also participated regularly in policy-based class discussions throughout the semester. Her contributions displayed an appreciation of important practical and policy considerations related to litigation in civil and criminal cases, and her questions typically advanced the discussion. From my perspective, it was, without question, a better class because of Ms. Marvel's participation. Consistent with her in-class participation, Ms. Marvel also performed exceptionally well on the final exam. She received a grade of "A" for the course.

Ms. Marvel's performance in my Evidence course is consistent with her excellent academic performance at Georgetown thus far. This is clear from her achievements to date, including her overall GPA as well as her selection as Editor-in-Chief of *The Georgetown Law Journal*. In addition to these impressive accomplishments, Ms. Marvel possesses other qualities that in my opinion would also make her an excellent law clerk. Most importantly, she appears to have an impressive understanding of, and interest in, many of the practical realities and challenges involved in modern litigation. For example, during a recent experience as a judicial extern, she was able to witness several evidentiary issues in practice in the context of trials and motions *in limine*. She was able to connect the practical contexts for these issues to our class discussions involving witnesses, hearsay, and expert testimony, among other issues. These connections, in my opinion, displayed an impressive understanding of the practical contexts for evidentiary issues and their real-world consequences. She also displayed an impressive understanding of the relationship between evidentiary issues and other practical issues throughout the litigation process more generally (for example, the relationship between the admissibility of experts under *Federal Rule of Evidence* 702 and summary judgment in civil cases). Given her impressive understanding of, and interest in, these issues, it was thus not a surprise to learn that Ms. Marvel's career goals are focused on litigation. Her impressive understanding of, and interest in, these issues—combined with her strong analytical, writing, and communication skills, as evident from her academic performance in law school thus far—also suggest that she would be an excellent law clerk and an asset to your chambers.

Based on the above considerations, I strongly recommend, enthusiastically and without reservation, Ms. Marvel for a clerkship position in your chambers. I would be happy to discuss Ms. Marvel's application further. The best way to reach me is via email at michael.pardo@georgetown.edu .

Sincerely,

Michael S. Pardo
Professor of Law

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Alexis Marvel to you for a clerkship. Alexis was a student in both my Contracts I course (where she received a grade of A) and Contracts II (where she received a grade of B+). Typically at Scalia Law, we only have our Contracts students for one semester (for either Contracts I or II). In Alexis's case, however, I had her in class for the entire year and so had the opportunity to get to know her well. I also had the opportunity to talk with her on many occasions outside of class and during office hours. Following her first year she transferred to Georgetown but we have remained in contact since.

Based on my experiences with Alexis, I am pleased to recommend her enthusiastically to you for a clerkship. Alexis's intellect and academic record speak for itself—she has proven herself an accomplished and diligent student, well-prepared for the study and practice of law. What distinguishes Alexis from the typical clerkship applicant, however, is her maturity and leadership qualities. I confess that when Alexis told me of her plans to transfer to Georgetown, I tried to talk her out of it—"Georgetown is such a large law school are you sure you want to transfer there and try to make your way?" Needless to say, I did not anticipate—but knowing Alexis's determination and leadership qualities—that by the end of her first year at Georgetown she would not only distinguish herself but be named Editor-in-Chief of the Georgetown Law Journal. Obviously she also picked up where she left off in the classroom, achieving a stellar academic record during her time at Georgetown. She is an extraordinary woman and Georgetown is lucky to have her.

In class, Alexis distinguished herself as one of the most well-prepared and most active and thoughtful participants to the classroom discussion. Her perspective as someone who had worked and been involved in politics for many years provided a gravitas and real-world perspective on Contracts Law, which is a valuable contribution to a class of first-year students, many of whom are straight out of college.

Alexis is destined to be a great lawyer and eventually to potentially become an academic or do something else in law. She is one of the most mature, thoughtful, and professional students that I have taught during my 25+ years as a law professor. She is a natural leader. She will be a collegial and pleasant personality to have in your chambers and will work well with her co-clerks and staff. It is my pleasure to recommend her to you for a clerkship.

Sincerely,

Professor Todd Zywicki
George Mason University Foundation Professor Law
Antonin Scalia Law School
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Victoria Walker
Former Adjunct Professor
Antonin Scalia Law School at George Mason University
Corporate Counsel at Amazon
wwalker6@gmu.edu | 202-632-5707

May 25, 2023

Dear Judge:

I take great pleasure in offering this letter of recommendation on behalf of Ms. Alexis Marvel. As Ms. Marvel's Legal Research, Writing & Analysis I/II professor at George Mason, I had the opportunity to instruct her in the classroom during her first full year of law school. Ms. Marvel showed tremendous promise then and her career as a law student has exceeded my lofty expectations. I remain convinced that she has a bright future in the legal profession and I offer this recommendation without reservation.

Ms. Marvel stood out as an exceptional student from the start of her 1L fall semester. She exhibited a high degree of self-motivation and confidence, and she always came to class prepared to engage with the subject matter and other students. I could always count on Ms. Marvel to be one of the first students to volunteer to answer a question or pose a question for class consideration. In class, her questions were always intelligent and thoughtful, and she made consistent and meaningful contributions to the class discussion. In our one-on-one meetings, she sought out actionable feedback to improve both the clarity of her writing and her analysis of the issues.

Her work product consistently reflected a strong grasp of the fundamentals of legal research, writing and analysis. Specifically, Ms. Marvel showed that she was capable of conducting accurate and efficient legal research on state and federal issues. This has been borne out in her law school career as indicated by her impressive transcript. Her writing was always free of errors, organized logically, and appropriate for her audience. I found her ability to analyze legal questions to be more advanced than that of any first year law student that I've taught thus far. She was able to identify and articulate the nuances of the law, and her analysis reflected an appreciation for the flexibility of the law. What I found most impressive about Ms. Marvel is that she consistently produced the best work in my class and yet she remained actively committed to improving. This commitment coupled with her intelligence, work ethic and intellectual curiosity has served her well in all her classes and I'm sure these qualities will serve her well in your chambers and beyond.

I thoroughly enjoyed instructing Ms. Marvel and she is undoubtedly one of the brightest students I've had the pleasure of teaching. She is a future trailblazer within the legal profession and great things lie ahead for her. I know she will be an extraordinary addition to your chambers.

Sincerely,
Victoria Walker
Former Adjunct Professor at Antonin Scalia Law School at George Mason University Corporate Counsel at Amazon

ALEXIS MARVEL

234 Warren Street NE, Washington, DC 20002 • 617.999.8372 • ajm443@georgetown.edu

WRITING SAMPLE

The attached writing sample is a persuasive memorandum written in opposition to summary judgment, which I produced for my first-year Legal Writing course in the 2022 Spring Semester. The assignment was to persuade the U.S. District Court for the Eastern District of Virginia to deny the defendant's motion for summary judgment on the matter of our client's trademark infringement claims. At issue was whether the defendant competitor infringed on our client's product mark by creating a likelihood of consumer confusion with its own product mark.

The memorandum is presented in its original, complete form. While the cited facts were based on a closed universe of fictitious materials, the cited law was not. I conducted all legal research, and the writing is my own. Section I.C–E and G–J, as well as the Conclusion, were edited by me alone. My instructor provided limited comments on earlier drafts of the following parts: Introduction; Statement of Facts; Summary Judgment Standard; and Section I.A–B and F.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

SUTTON FAMILY MILLS, INC., A VIRGINIA CORPORATION, Plaintiff, v. PERFORMAX, INC., A MAINE CORPORATION, Defendant.	Civil Action No. 1:22-cv-01207

Memorandum of Law Opposing Defendant's Motion for Summary Judgment

Introduction

Plaintiff Sutton Family Mills, Inc. ("Sutton") is a respected, century-old business with a forty-two percent share of the dog food market. Sutton has continually sold and advertised "Nature's Choice," its highest-grossing dog food, since it registered the trademark in 1995. In December 2021, Defendant PerforMax ("PerforMax"), a company founded in 2011, infringed on Sutton's trademark when it introduced a dry dog food called "Nature's Best" to market. PerforMax now argues that Sutton's trademark infringement claims must be dismissed.

Summary judgment is inappropriate and should be denied. Discovery has confirmed the strength of Sutton's claims, particularly on the strength of Sutton's mark, PerforMax's intent to confuse consumers, and actual consumer confusion. Because the Fourth Circuit places the weight of trademark infringement on the foregoing three factors, a reasonable jury could conclude PerforMax infringed on Sutton's trademark by creating a likelihood of consumer confusion.

First, the record shows Sutton's mark is strong. Sutton's mark is conceptually strong because the United States Patent and Trademark Office (USPTO) did not require Sutton to prove the mark's secondary meaning. Sutton's mark is commercially strong because Sutton has continually used it for decades, earned $1.5 billion in sales in 2020, and advertises the mark extensively in the Super Bowl, mainstream media, and online.

Second, a reasonable jury could conclude that PerforMax intended to create consumer confusion. PerforMax admits it knew of Sutton's mark, the risk of consumer confusion, and ignored a cease-and-desist letter. Because PerforMax continued to use its mark despite such knowledge, PerforMax's intent is in genuine dispute.

Third, the record shows actual consumer confusion within a week of PerforMax's product being brought to market, and a reasonable inference regarding decreased sales suggests further confusion took place. The Fourth Circuit has consistently held that, at summary judgment, any instance of consumer confusion creates a genuine dispute of material fact. Thus, based on the record, summary judgment is inappropriate and should be denied.

Statement of Facts

Sutton's 125-year-old business has produced and sold its Nature's Choice dog food continuously since at least 1995. Marsh Dep. 4:5–6. Today, Sutton commands a forty-two percent share of the dog food market. Marsh Dep. 14:1. Sutton carries five different dog food brands, four of which are specialized to puppies or senior dogs; Nature's Choice is its highest-grossing dog food and is suitable for any adult dog. Marsh Dep. 4:1–3.

By issuing a federal trademark registration in 1995 without requiring Sutton to prove the mark's secondary meaning, the USPTO has recognized Sutton's ownership of—and exclusive right to use—the Nature's Choice trademark. Marsh Dep. 4:9–11. A trademark registration

search of "nature" pulls a total of 15,072 results, 1,060 of which are within the same agricultural classification as dog food. Czyzas Aff. Exs. B-C.

In December 2021, without Sutton's authorization, and despite Sutton's prior use and rights in the Nature's Choice trademark, PerforMax introduced a new adult dog food product that is marketed and sold as "Nature's Best." Nature's Choice and Nature's Best are both dog food brands that are sold in volumes of five, fifteen, and thirty-pound bags in Petco and PetSmart on the east coast. Marsh Dep. 4:17–25; Lee Dep. 8:16–17, 10:8–11. While consumers across the country purchase both products, Sutton sells exclusively to retailers and PerforMax offers it for sale on its own website. *Id.*

Both companies advertise extensively online and in print; Sutton alone spends $50 million each year on companywide advertising, marketing Nature's Choice in Super Bowl commercials, major magazines, primetime television, and online. Marsh Dep. 6:15–17, 7:10–12; Lee Dep. 5:6–9, 6:22–24. On both the Nature's Choice and Nature's Best packaging materials, "Nature's" is written in cursive with a line below it and precedes another single-syllable word in all caps. Lee Dep. 18:19–24, 19:1–5.

PerforMax has stated it does not want their consumers to confuse the two products, but nothing in the record shows that PerforMax does not want to confuse Sutton's consumers. Lee Dep. 19:16. PerforMax expressed concern about consumer confusion in an internal email and admits knowing that a "low-information" consumer might be confused if they are looking for dog food with the word "nature" in it. Lee Dep. 29:14–17, Ex. 3.

Consumer confusion did take place within a week of Nature's Best being introduced to market. De La Hoya Aff ¶ 6. A longtime Sutton customer, whose husband typically buys their family's dog food, visited Petco to purchase a bag of Nature's Choice. *Id.* When she arrived at

the store, she purchased PerforMax's dog food by mistake because she was looking for a brand name that began with the word "nature." *Id.*

PerforMax targets affluent consumers through premium ingredients and higher price. Lee Dep. 9:8–9, 11:3–5. However, PerforMax also targets a national audience through online sales and advertising and ships its product to consumers in all fifty states. Lee Dep. 6:22–24, 31:12–15. According to PerforMax, online sales and dog food spending have soared during the pandemic. Lee Dep. 17:13–16. At the same time, stores like Petco now display organic, premium-priced products like Nature's Best in a prominent area of the store, away from the "mass-manufacturing" section where Nature's Choice is sold. Scherago Aff. ¶ 6.

When Sutton learned of PerforMax's use of Nature's Best, it sent a letter to Mr. Peter J. Tarsney of PerforMax on December 20, 2021, and demanded that PerforMax cease-and-desist from all current and future use of Nature's Best products. Compl. Ex. D. PerforMax admits they received and ignored Sutton's letter and continued to use the Nature's Best mark. Lee Dep. Ex. 3; Lee Dep. 17:19–25, 18:1–9.

Nature's Choice's actual sales were off from what Sutton had projected for December. Marsh Dep. 8:12–16. In the same month, the dog food market as a whole continued to grow, and Sutton did not experience unusual supply chain delays. *Id.*

Sutton filed the Complaint in this case on February 13, 2022, and PerforMax provided its Answer on February 14, 2022. Following discovery, PerforMax filed a motion for summary judgment, to which this memorandum stands in opposition.

Summary Judgment Standard

The Federal Rules of Civil Procedure provide that summary judgment is only appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant

is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine when a reasonable jury could find in favor of the nonmovant, and a fact is material when it might affect the outcome of the case under the governing law. *Variety Stores, Inc. v. Wal-Mart Stores, Inc.*, 888 F.3d 651, 659 (4th Cir. 2018) (citing *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 568 (4th Cir. 2015)). The test to be applied on a motion for summary judgment, then, is whether the pleadings and depositions, together with the affidavits, show no genuine issue as to any material fact such that the moving party is entitled to a judgment as a matter of law. *Tunstall v. Brotherhood of Locomotive Firemen*, 69 F. Supp. 826 (E.D. Va. 1946), *aff'd*, 163 F.2d 289 (4th Cir. 1947); *Sherman v. City of Richmond*, 543 F. Supp. 447 (E.D. Va. 1982); *Long v. First Union*, 894 F. Supp. 933 (E.D. Va. 1995), *aff'd*, 86 F.3d 1151 (4th Cir. 1996). The party moving for summary judgment bears the burden of demonstrating the basis for its motion and identifying specific parts of the record that show the absence of a genuine issue of material fact. Fed. R. Civ. P. 56(c).

When reviewing a motion for summary judgment, the nonmovant's evidence must be taken as true. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248-49 (1986). Further, at summary judgment, a court should not weigh the evidence on the merits or determine the credibility of any facts within the record. *Variety Stores*, 888 F.3d at 659 (citing *Lee v. Town of Seaboard*, 863 F.3d 323, 327 (4th Cir. 2017)). Instead, the court should view the evidence in the light most favorable to the party opposing the summary judgment motion and draw all reasonable inferences in that party's favor. *George & Co. LLC v. Imagination Entertainment Ltd.*, 575 F.3d 383, 392 (4th Cir. 2009). The court's role at summary judgment is not to determine the truth of the matter. *Rosetta Stone Ltd. v. Google, Inc.*, 676 F.3d 144, 160 (4th Cir. 2012) (reversing the district court's grant of summary judgment for defendant on plaintiff's trademark infringement

claims). Rather, the court should determine whether the evidence of record would allow a reasonable jury to find in favor of the nonmovant. *Anderson*, 477 U.S. at 248-49.

This Circuit has recognized that a trademark infringement claim often warrants a denial of summary judgment, because "the jury, which represents a cross-section of consumers, is well-suited to evaluating whether an 'ordinary consumer' would likely be confused." *Anheuser-Busch, Inc. v. L & L Wings, Inc.*, 962 F.2d 316, 318 (4th Cir. 1992); *see also Gov't Emps. Ins. Co. v. Google, Inc.*, 2005 U.S. Dist. LEXIS 18642, at *2 n.1 (E.D. Va. Aug 8, 2005) (denying defendant's motion for summary judgment on a likelihood of confusion case, "because such a highly factual question is inappropriate for resolution on summary judgment."). Given this standard, and because a jury could find in favor of Sutton on likelihood of confusion, Sutton asks this Court to deny summary judgment.

Argument

I. Summary judgment should be denied because the record shows a jury could find PerforMax's mark creates a likelihood of confusion.

To show trademark infringement under the Lanham Act, a plaintiff must prove that (1) it owns a valid mark; (2) the defendant used the mark without the plaintiff's authorization; (3) the defendant used the mark for the sale, distribution, or advertising of goods or services; and (4) the defendant's use of the mark is likely to confuse consumers. *Rosetta Stone*, 676 F.3d at 152; 15 U.S.C. §§ 1114(a), 1125(a). Under the Lanham Act, a USPTO certificate of registration provides prima facie evidence that the registered mark is valid and owned by the registrant with exclusive rights of use. *Retail Servs. Inc. v. Freebies Publ'g*, 364 F.3d 535, 542 (4th Cir. 2004) (citing 15 U.S.C. § 1057(b) (West 1997)).

To show a likelihood of confusion, a plaintiff must prove that the defendant's use of the plaintiff's trademark is likely to confuse an ordinary consumer regarding the origin or affiliation

of the goods. *People for the Ethical Treatment of Animals v. Doughney*, 263 F.3d 359, 366 (4th Cir. 2001); *CareFirst of Maryland, Inc. v. First Care, P.C.*, 434 F.3d 263, 267 (4th Cir. 2006). In the Fourth Circuit, likelihood of confusion is a fact-intensive test with a nine-factor analysis: (1) the conceptual and commercial strength of the plaintiff's mark in its marketplace; (2) similarity of the two marks; (3) similarity of the goods or services; (4) similarity of facilities used to market and sell the products; (5) similarity of advertising; (6) the defendant's intent; (7) actual confusion; (8) the quality of the defendant's product; and (9) sophistication of the consuming public. *Variety Stores*, 888 F.3d at 660; *Rosetta Stone*, 676 F.3d at 153; Lanham Trade-Mark Act § 32, 15 U.S.C.A. § 1114(1)(a).

Not all of the factors used in the likelihood of confusion analysis will be relevant in every trademark dispute, and each factor need not support the plaintiff's position. *George & Co.*, 575 F.3d at 393; *Variety Stores*, 888 F.3d at 660; *Synergistic Int'l, L.L.C. v. Korman*, 470 F.3d 162, 171 (4th Cir. 2006). The Fourth Circuit weighs the strength of the mark (factor one), intent (factor six), and actual confusion (factor seven) most heavily in a likelihood of confusion analysis. *Variety Stores*, 888 F.3d at 666; *Pizzeria Uno Corp. v. Temple*, 747 F.2d 1522, 1527 (4th Cir. 1984) (holding strength of mark is "paramount" to determine likelihood of confusion); *CareFirst*, 434 F.3d at 268 (finding actual confusion is often of "critical importance" in a likelihood of confusion analysis); *George & Co.*, 575 F.3d at 400 ("[W]e are aware of no case where a court has allowed a trademark infringement action to proceed beyond summary judgment where two weak marks were dissimilar, there was no showing of a predatory intent, and the evidence of actual confusion was de minimis.").

A reasonable jury could find in favor of Sutton on the Fourth Circuit's three most important factors: strength of mark, intent, and actual confusion. Strength of mark (factor one)

favors Sutton because the USPTO did not require proof of secondary meaning and because Nature's Choice has been continually used since 1995 with substantial sales and advertising expenditures. Intent (factor six) could favor Sutton because PerforMax had knowledge of Sutton's mark, the potential for consumer confusion, and Sutton's cease-and-desist letter. Actual confusion (factor seven) favors Sutton because a consumer was confused within a week of PerforMax bringing Nature's Best to market, and a reasonable inference regarding a decrease in sales suggests further confusion took place.

A reasonable jury could also find the other factors either weigh in favor of Sutton or are irrelevant to this case. The marks are similar (factor two) because they use the same dominant term, incorporate a similar design, and the words are synonymous. Likewise, the facilities (factor four) used by Sutton and PerforMax are similar because of some overlap in their target markets. Further, the two marks' advertising is similar (factor five) because both Sutton and PerforMax advertise them online and in print to a national audience. Additionally, Nature's Best and Nature's Choice are indisputably similar goods (factor three) because both products are dry adult dog food. The Fourth Circuit usually only takes the quality of defendant's product (factor eight) into consideration when it is a cheap imitation. However, because the higher price of Nature's Best gives it a more prominent placement in stores than Nature's Choice, a jury could infer the quality of PerforMax's product is relevant to show it intended to generate underserved sales. Finally, courts find consumer sophistication (factor nine) irrelevant when the product is purchased by ordinary consumers, as is the case here.

On balance, a reasonable jury could find in favor of Sutton in a likelihood of confusion analysis. Therefore, the defendant's motion for summary judgment should be denied.

A. Factor one: Sutton's mark is strong on the basis of the USPTO's judgment and because consumers associate the mark with Sutton.

Nature's Choice is a strong mark. A mark is strong if it has both conceptual and commercial strength. *Grayson O Company v. Agadir International, LLC*, 856 F.3d 307, 315 (4th Cir. 2017) (citing *Pizzeria Uno*, 747 F.2d at 1527); *George & Co.*, 575 F.3d at 393. A mark's conceptual strength is based on the distinctiveness of its visual appearance in the context of the product sold. *Perini Corp. v. Perini Const., Inc.*, 915 F.2d 121, 125 (4th Cir. 1990). Distinctiveness is defined by four categories: (1) generic; (2) descriptive; (3) suggestive; or (4) fanciful. *Grayson O*, 856 F.3d at 315 (citing *George & Co.*, 575 F.3d at 393-94). Suggestive marks generally require some consumer imagination to associate the mark with the product, while descriptive marks characterize the product. *Pizzeria Uno*, 747 F.2d at 1528 (citing *Soweco, Inc. v. Shell Oil Co.*, 617 F.2d 1178, 1183 (5th Cir. 1980)). Because suggestive and fanciful marks are strong, courts afford them the greatest protection against trademark infringement. *Sara Lee Corp. v. Kayser-Roth Corp.*, 81 F.3d 455, 466 (4th Cir. 1996). The Fourth Circuit finds a mark is prima facie suggestive when the USPTO does not require proof of secondary meaning, because the USPTO will not register generic or descriptive marks if they lack secondary meaning. *Retail Servs.*, 364 F.3d at 538.

A court will find a mark's commercial strength is more important than conceptual strength when consumers associate the mark with a particular business. *See Renaissance Greeting Cards, Inc. v. Dollar Tree Stores, Inc.*, 405 F. Supp. 2d 680, 690-91 (E.D. Va. 2005); *CareFirst*, 434 F.3d at 269; *Grayson O*, 856 F.3d at 315. The Fourth Circuit measures commercial strength by weighing the following factors: (1) the plaintiff's advertising expenditures; (2) consumer studies linking the mark to a source; (3) the plaintiff's record of sales success; (4) unsolicited media coverage of the plaintiff's business; (5) attempts to plagiarize the

mark; and (5) the length and exclusivity of the plaintiff's use of the mark. *Perini*, 915 F.2d at 125. Not all factors are relevant in every commercial strength analysis, and each factor need not support the plaintiff. *See id.*

Sutton's mark has conceptual and commercial strength. Sutton's mark is conceptually strong because the USPTO did not require proof of secondary meaning to register the trademark, and because the Nature's Choice mark does not characterize dog food. Sutton's mark is commercially strong because Sutton has continually used it since 1995, earned $1.5 billion in sales in 2020, and advertises the mark in major magazines, primetime television, and online. Therefore, a jury could find factor one favors Sutton and summary judgment should be denied.

1. Sutton's mark is conceptually strong because the USPTO did not require proof of secondary meaning to register the mark.

Sutton's mark is conceptually strong. In the Fourth Circuit, a mark is presumed conceptually strong when the USPTO does not require separate proof of secondary meaning to register the mark. *America Online, Inc. v. AT&T Corp.*, 243 F.3d 812, 818 (4th Cir. 2001); *Retail Servs.*, 364 F.3d at 543. While a mark's frequency of use in the same industry can signal conceptual weakness, at summary judgment the Fourth Circuit consistently finds frequency of use is not enough to overcome the presumptive strength of the USPTO's judgment. *CareFirst*, 434 F.3d at 269-70; *America Online*, 243 F.3d at 818; *see also RFE Indus., Inc. v. SPM Corp.*, 105 F.3d 923, 926 (4th Cir. 1997) (holding that, at summary judgment, "a district court should not freely substitute its opinion for that of the [US]PTO because a decision to register a mark, without requiring evidence of secondary meaning, is powerful evidence that the registered mark is suggestive and not merely descriptive").

The USPTO will not register a generic or descriptive mark without evidence of secondary meaning; when the USPTO does not require such evidence, a court will presume the mark is

suggestive or fanciful and thus inherently distinctive. *RFE Indus.*, 105 F.3d at 926 (finding USPTO will not register descriptive marks without inherent or explicit proof of secondary meaning); *Pizzeria Uno*, 747 F.2d at 1528. Suggestive marks generally require some consumer imagination to associate the dominant term of the mark with the product, while descriptive marks merely characterize the product. *Id.* (citing *Soweco*, 617 F.2d at 1183). Suggestive marks are distinctive, and a mark that is distinctive is entitled to the full weight of trademark protection. *Retail Servs.*, 364 F.3d at 538.

At summary judgment, conceptual strength favors the plaintiff when the USPTO does not require proof of secondary meaning, or when some imagination is required for consumers to associate the mark with the product. *Pizzeria Uno*, 747 F.2d at 1528. In *Pizzeria Uno v. Temple*, the USPTO did not require proof of secondary meaning when the plaintiff's mark was registered. *Id.* at 1524. The court also found that the dominant term of the plaintiff's mark—"Uno"—did not characterize food, and thus required some imagination from consumers. *Id.* at 1528. While the court also cited the mark's infrequent use as supportive of conceptual strength, it entitled the USPTO's judgment as presumptive evidence that the mark was suggestive. *Id.* at 1533. Thus, the court held the mark had presumptive conceptual strength unless the defendant could prove the USPTO was inaccurate in its judgment. *Id.* at 1534.

Sutton's mark has conceptual strength because the mark is suggestive, and Sutton's mark is suggestive rather than descriptive for three reasons. First, like the plaintiff in *Pizzeria Uno*, the USPTO did not require Sutton to show proof of secondary meaning to register its mark. Marsh Dep. 4:9–11. Second, just as dominant term of the plaintiff's mark in *Pizzeria Uno* did not characterize food and thus required consumer imagination, the dominant term of Sutton's mark—"Nature"—does not characterize dog food and thus requires consumer imagination.

Third, in *Pizzeria Uno*, the dominant term of the plaintiff's mark was not used frequently in the restaurant industry. Comparably, the record does not show that the term "nature" is used frequently in the dog food industry. Czyzas Aff. Ex. C. Since the court in *Pizzeria Uno* held the burden is on the defendant to overcome the presumptive strength of the USPTO's judgment, a jury here could find PerforMax did not meet that burden. Thus, the USPTO's judgment on secondary meaning, combined with the need for consumer imagination, shows Sutton's mark is suggestive and conceptually strong.

2. Nature's Choice has commercial strength because Sutton has continually used the mark since 1995, had $1.5 billion in sales in 2020, and advertises in mainstream media.

Sutton's mark is commercially strong. When analyzing commercial strength, the Fourth Circuit emphasizes advertising expenditures, sales success, and the length and exclusivity of the plaintiff's use of the mark. *Perini*, 915 F.2d at 125; *see also Synergistic*, 470 F.3d at 174 (holding plaintiff's mark commercially strong because of substantial national advertising); *Bridgestone Ams. Tire Operations, LLC v. Federal Corp.*, 673 F.3d 1330, 1336 (Fed. Cir. 2012) (holding plaintiff's mark commercially strong because of extended use, substantial advertising, and billions in sales). Such factors can be undermined by evidence of extensive third-party use in the same industry. *See CareFirst*, 434 F.3d at 270. However, even with evidence of extensive third-party use, this Circuit puts commercial strength in genuine dispute if the plaintiff can also show some evidence of the mark's sales success, advertising expenditures, and length of use. *Variety Stores*, 888 F.3d at 663-64. Further, when a company concurrently uses its name alongside the product mark on packaging and in advertising, the mark's strength is not diminished. *Bridgestone*, 673 F.3d at 1336 (holding that the plaintiff's concurrent use of the "Bridgestone" name does not diminish the strength of their "Potenza" and "Turanza" marks); *Bose Corp. v.*

QSC Audio Prods., Inc., 293 F.3d 1367, 1375 (Fed. Cir. 2002) (holding the disputed marks have strength independent from the plaintiff's company name).

Commercial strength is considered to be in genuine dispute if the plaintiff used the mark for a long time with substantial sales and advertising expenditures, regardless of extensive third-party use. *Variety Stores*, 888 F.3d at 663-64. In *Variety Stores v. Wal-Mart*, the plaintiff earned more than fifty-six million in sales from products bearing its marks, spent millions of dollars in advertising, and used its mark in the marketplace for decades. *Id.* at 658. The court concluded that such evidence could show the mark's commercial strength, despite extensive third-party use. *Id.* at 664. Thus, the court held commercial strength was genuinely disputed and that a jury could find in favor of the plaintiff. *Id.*

A company's concurrent use of their name and the product mark on packaging and in advertising does not diminish the mark's commercial strength. *Bridgestone*, 673 F.3d at 1336. In *Bridgestone v. Federal*, the plaintiff advertised and sold tires featuring a product-specific mark as well as the company name. *Id.* The court concluded that the strength of a mark should be weighed separately from the company's name when both are identified on the branded product. *Id.* Since the plaintiff used the product-specific mark for many years, with billions of dollars in sales and extensive advertising in that time, the court held that the mark had independent commercial strength. *Id.*

A jury could find Sutton's mark is commercially strong regardless of any third-party use. Like the plaintiff in *Variety Stores*, the record shows third parties use the term "nature." Czyzas Aff. Ex. B. The plaintiff in *Variety Stores* maintained its mark's use for decades, earned millions in sales, and spent millions on advertising. Comparably, Sutton has continually used its mark since 1995, earned $1.5 billion in sales in 2020, and advertises the product in the Super Bowl,

major magazines, primetime television, as well as online. Marsh Dep. 3:4–6, 6:7–9, 11:11–12. Thus, just as the court in *Variety Stores* concluded a reasonable jury could find the plaintiff's mark had commercial strength despite third-party use, here a reasonable jury could conclude the same in favor of Sutton.

Sutton's concurrent use of its name and product mark on packaging and in advertising does not diminish the independent commercial strength of their product mark. Like the plaintiff in *Bridgestone,* Sutton's company name is identified alongside the Nature's Choice mark. Compl. Ex. B. Further, like the plaintiff in *Bridgestone,* Sutton has used its product mark for many years with billions in sales and extensive advertising. Marsh Dep. 3:4–6, 6:7–9, 11:11–12. Thus, a reasonable jury could infer that Sutton's concurrent use of their company name has no bearing on the commercial strength or sales success of the Nature's Choice mark. When considering the evidence of commercial strength in the light most favorable to Sutton, a jury could find Nature's Choice has commercial strength. Thus, summary judgment is inappropriate.

Taking the evidence of conceptual and commercial strength together, a jury could find Sutton's mark is strong. Therefore, summary judgment should be denied.

B. Factor two: Nature's Best and Nature's Choice are similar because the dominant term is identical, and the marks use a similar design.

Nature's Best and Nature's Choice are similar marks. The Fourth Circuit considers the appearance, sound, and meaning of the mark's dominant term to determine whether the marks are similar. *See Pizzeria Uno*, 747 F.2d at 1534-35 (finding "Uno," the dominant term of both marks, was similar in "appearance," "sound," and "meaning"); *George & Co.*, 575 F.3d at 396 (holding the court must focus on the dominant term of the mark). This Court has held that the marks are similar when the dominant terms overlap, even if the other parts of the mark are dissimilar. *Select Auto Imports Inc. v. Yates Select Auto Sales, LLC*, 195 F. Supp. 3d 818, 835

(E.D. Va. 2016). Moreover, an identical dominant term is strong evidence that the appearance and sound of the marks are similar enough to confuse consumers. *Pizzeria Uno,* 747 F.2d at 1534. Even where evidence of similarity in sound and meaning are lacking, the marks need only be similar in appearance. *Lone Star Steakhouse & Saloon, Inc. v. Lone Star Grill,* 43 F.3d 922, 936 (4th Cir. 1995) (citing *Pizzeria Uno*, 747 F.2d at 1529-30, 1534-35).

The two marks are similar because the dominant term is identical and their appearances overlap. On both marks, "Nature's" is written in cursive with a line below the first part of the term, followed by a single-syllable word in all caps. Lee Dep. 18:19–24, 19:1–5. Further, the two marks are similar in sound because the first word is identical, and the second word is a single syllable. Lastly, the meaning is similar because the "choice" of nature and the "best" of nature are synonymous, evidenced by PerforMax's concern over email that the two marks could confuse consumers. Lee Dep. Ex. 3. Thus, when considering the evidence of similarity of marks in the light most favorable to Sutton, summary judgment should be denied because a reasonable jury could find the two marks are similar.

C. Factor three: Nature's Choice and Nature's Best are similar goods because both are dry dog food sold in five, fifteen, and thirty-pound bags.

Nature's Choice and Nature's Best are indisputably similar goods. Goods need only be related for factor three to favor the plaintiff. *See Lone Star*, 43 F.3d at 936; *Pizzeria Uno*, 747 F.2d at 1535 (holding factor three favors the plaintiff when the "companies serve the same purpose"); *Commc'ns Satellite Corp. v. Comeet. Inc.*, 429 F.2d 1245, 1252 (4th Cir. 1970) (finding likelihood of confusion between "COMSAT" for communications services and "COMCET" for computer goods). Both products are similar because they are both dry adult dog food sold in the same five, fifteen, and thirty-pound bags. Lee Dep. 8:16–17, 24–25; Marsh Dep.

3:13–14, 4:1, 5:9–10. Because a jury will likely find the two marks are similar, summary judgment is therefore inappropriate.

D. Factor four: The facilities are similar because the parties both sell to Petco and PetSmart on the east coast and to consumers across the country.

A reasonable jury could find that the facilities for both products are similar. The similarity of facilities is in genuine dispute when the parties are direct competitors in overlapping geographical markets. *Variety Stores*, 888 F.3d at 664-65. A company's exact method of distributing the product is only important if it influences the end consumer's decision to make the purchase. *See Amstar Corporation v. Domino's Pizza, Inc.*, 615 F.2d 252, 262 (5th Cir. 1980) (holding the parties' differing methods of distributing the product—direct to consumer versus direct to retailer—was only significant because the restaurant consumers did not choose or purchase the plaintiff's sugar packets).

Sutton and PerforMax use similar facilities for Nature's Choice and Nature's Best. Both parties are direct competitors selling dog food to consumers across the country, as well as in Petco and PetSmart on the east coast. Marsh Dep. 4:17–25; Lee Dep. 10:8–11. That Sutton and PerforMax differ in their methods of distributing dog food—direct to consumer versus direct to retailer—is unimportant because consumers still choose and purchase dog food from both companies. Marsh Dep. 4:17–25; Lee Dep. 8:16–17, 10:8–11. Because a reasonable jury will likely find the facilities are similar, factor four weighs in favor of denying summary judgment.

E. Factor five: Advertising is similar because the parties both advertise the marks online and in print to a national audience.

Nature's Best and Nature's Choice advertising are similar enough to raise a genuine dispute of material fact. This Court has held that a similarity of advertising only requires "some degree of overlap" between the advertising channels and consumer targets, and they need not be

identical. *Select Auto*, 195 F. Supp. 3d at 837 (citing *Frehling Enters., Inc. v. Int'l Select Grp., Inc.*, 192 F.3d 1330, 1339 (11th Cir. 1999)). Advertising to a specialized demographic is only dissimilar from a broader demographic when the narrower audience is localized. *See Amstar*, 615 F.2d at 262 (holding defendant's audience of male college students was dissimilar from the plaintiff's national audience); *Petro Stopping, L.P. v. James River Petroleum, Inc.*, 130 F.3d 88, 95 (4th Cir. 1997). Similarity in consumer targets need not be based on demographics if the consumers are in the same geographic area. *See Select Auto*, 195 F. Supp. 3d at 837 (citing *Pizzeria Uno*, 747 F.2d at 1535); *Fuel Clothing Co. v. Nike, Inc.*, 7 F. Supp. 3d 594, 619 (D.S.C. 2014).

Advertising is similar when at least some degree of overlap exists between the product's advertising channels. *Select Auto*, 195 F. Supp. 3d at 837. In *Select Auto Imports v. Yates Select Auto Sales*, the plaintiff, unlike the defendant, advertised on radio, television, and physical signs. *Id.* at 827. However, the court found there was enough overlap because both parties advertised on their websites, social media, store signage, and merchandise. *Id.* at 837. Thus, the court held similarity of advertising weighed in favor of the plaintiff. *Id.*

Advertising to a specialized demographic is only dissimilar from advertising to a broader demographic when the former is based on a specific locality with no overlap in audience or channels. *Petro Stopping*, 130 F.3d at 95. In *Petro Stopping*, the plaintiff advertised to a broad demographic on radio, billboards, and highway exit signs, while the defendant targeted local newsletters. *Id.* The court concluded there was no overlap in the target audience or channels used because the defendant's advertising was based entirely on one locality. *Id.* Thus, the Fourth Circuit supported the lower court's finding that there was no similarity of advertising. *Id.*

A jury could find the advertising channels used by Sutton and PerforMax are similar because both companies advertise online and in print. Marsh Dep. 6:15–17, 7:10–12; Lee Dep. 5:6–9 , 6:22–24. Like the parties in *Select Auto*, Sutton advertises on television whereas the PerforMax does not. *Id.* Additionally, like the parties in *Select Auto*, PerforMax and Sutton both advertise online. *Id.* Just as the court found a partial overlap was enough to show similarity of advertising, here a reasonable jury could conclude the same.

A jury could also distinguish this case from *Petro Stopping* because both companies target a national audience. Marsh Dep. 4:17–25; Lee Dep. 8:16–17, 10:8–11. Like the parties in *Petro Stopping*, PerforMax targets a more specialized demographic than Sutton. Lee Dep. 9:8–9, 11:3–5. However, unlike the parties in *Petro Stopping*, both PerforMax and Sutton advertise nationally on their websites, online, and in print magazines. Lee Dep. 6:22–24, 31:12–15. Since the court in *Petro Stopping* only concluded advertising was dissimilar because there was no overlap in audience or channels, here a jury could conclude that the advertising is similar because there is an overlap in audience and channels. Thus, the record presents a genuine dispute over whether the factor five favors Sutton, and summary judgment is inappropriate.

F. Factor six: A jury could find PerforMax intended to confuse consumers because they continued to use the Nature's Best mark despite knowledge of Sutton's mark, the risk of confusion, and the cease-and-desist letter.

PerforMax's intent to confuse consumers is in genuine dispute. Prior knowledge of the plaintiff's mark creates an inference of intent. *See Variety Stores*, 888 F.3d at 665; *Star Indus., Inc. v. Bacardi & Co. Ltd.*, 412 F.3d 373, 389 (2d Cir. 2005) (holding bad faith is inferred by actual or constructive knowledge of the mark); *Teaching Co. Ltd. P'ship v. Unapix Entm't, Inc.*, 87 F. Supp. 2d 567, 582-83 (E.D. Va. 2000). Further, a defendant's continued use of the mark after the plaintiff sends a cease-and-desist letter provides additional evidence to support intent.

Lone Star, 43 F.3d at 937; *Select Auto*, 195 F. Supp. 3d at 837-38; *see also W.W.W. Pharm. Co. v. Gillette Co.*, 984 F.2d 567, 575 (2d Cir. 1993) (finding the absence of additional evidence beyond knowledge can support good faith). Intent to confuse consumers provides strong evidence that the infringing mark is a deliberate attempt to confuse consumers for the purpose of profiting from another business's reputation. *Pizzeria Uno*, 747 F.2d at 1535. When a defendant does not investigate possibly infringing marks or disregards legal advice, intent favors the plaintiff. *Variety Stores*, 888 F.3d at 665 (finding intent was genuinely disputed because, although plaintiff was not a major competitor, defendant disregarded the advice of counsel concerning the infringing mark).

Intent is inferred when the defendant had knowledge of the plaintiff's mark and continued to use the mark after receiving a cease-and-desist letter. *Select Auto*, 195 F. Supp. 3d at 837-38. In *Select Auto Imports v. Yates Select Auto Sales*, the plaintiff dealership used and advertised its registered mark for decades before the defendant, with prior knowledge of the plaintiff's mark, entered the market. *Id.* at 824-25. The defendant received and ignored plaintiff's cease-and-desist letter, then proceeded to use the mark in its own dealership. *Id.* at 826. Because the defendant used the mark despite knowledge of potential infringement, the court concluded there was strong evidence of bad faith and intent to confuse consumers for the purpose of profiting from the plaintiff's reputation. *Id.* at 838. Thus, the court held that factor six weighed in favor of the plaintiff. *Id.*

A jury could find PerforMax intended to confuse consumers because they knew about Sutton's mark and continued to use the Nature's Best mark after receiving Sutton's cease-and-desist letter. Lee Dep. Ex. 3, 17:19–25, 18:1–9. Like the plaintiff in *Select Auto*, Sutton used and advertised its registered mark for decades. Marsh Dep. 4:5–6. Moreover, like the defendant in

Select Auto, PerforMax had prior knowledge of Sutton's mark and continued to use the Nature's Best mark after Sutton sent a cease-and-desist letter. Lee Dep. Ex. 3, 17:19–25, 18:1–9. Further, while the record suggests PerforMax did not want their consumers to confuse the two products, nothing in the record shows PerforMax did not want to confuse Sutton's consumers. Lee Dep. 19:16, 29:14–17. In fact, PerforMax admits knowing that a "low-information" consumer might be confused if they are looking for dog food with the word "Nature" in it—as was the case with Ms. De La Hoya. De La Hoya Aff. ¶ 6. Because the court in *Select Auto* found in favor of the plaintiff on intent based on the defendant's prior knowledge and continued use of the mark, a reasonable jury could find the same in this case. Thus, summary judgment should be denied.

G. Factor seven: A jury could find PerforMax caused actual confusion because a consumer was confused within a week of Nature's Best being brought to market, and a reasonable inference suggests further instances of confusion.

A jury could find in favor of Sutton on actual consumer confusion. The Fourth Circuit has held that any evidence of actual confusion could lead a jury to find a likelihood of confusion. *Tools USA v. Champ Frame Straightening*, 87 F.3d 654, 661 (4th Cir. 1996) (citing *John H. Harland Co. v. Clarke Checks, Inc.*, 711 F.2d 966, 978-79 (11th Cir. 1983) (holding plaintiff's evidence of only two instances of actual confusion meant "the jury reasonably could have inferred" likelihood of confusion even if "the evidence . . . was not sufficient to compel" such a finding)). However, evidence of actual confusion is not necessary to prove likelihood of confusion because the Lanham Act is designed to protect consumers before confusion begins. *See Variety Stores*, 888 F.3d at 666; *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 163-164 (1995). A lack of evidence of actual confusion is de minimis when the plaintiff is a substantial actor and a long period of time has passed, or less than 10% of surveyed consumers are confused. *See George & Co.*, 575 F.3d at 400; *Petro Stopping*, 130 F.3d at 95; *Sara Lee*, 81 F.3d

at 467 n.15 (finding actual confusion can be supported by survey evidence showing confusion in 10% or more of consumers). Actual confusion need not be shown through survey evidence; anecdotal evidence is sufficient. *RXD Media, LLC v. IP Application Dev. LLC*, 986 F.3d 361, 372 (4th Cir. 2021); *Sara Lee*, 81 F.3d at 466-67 (finding the testimony of six consumers provided "nearly overwhelming" proof of actual confusion).

Whether a few instances of actual confusion are de minimis is a question to be determined at trial, not at summary judgment. *See Petro Stopping*, 130 F.3d at 95. In *Petro Stopping v. James River Petroleum*, the plaintiff and defendant both operated fueling stations. *Id.* at 90-91. The plaintiff earned more than two billion in sales over the preceding five years and filed suit four years after the defendant began using its mark in the marketplace. *Id.* at 91. At trial, the plaintiff could not produce more than a few instances of evidence of actual confusion. *Id.* at 95. On appeal, the court found that because a long time had passed, and because the plaintiff had a large market share comparative to the number of confused consumers, the evidence was at best "de minimis" and at worst weighed against the plaintiff. *Id.* Thus, the court held on the merits of the evidence that factor seven did not favor the plaintiff. *Id.*

Actual confusion favors Sutton because consumer confusion took place within a week of Nature's Best being brought to market. De La Hoya Aff. ¶ 6. While both the plaintiff in *Petro Stopping* and Sutton earned billions in sales, a jury could distinguish this case from *Petro Stopping* for two reasons. First, the court in *Petro Stopping* found actual confusion was de minimis because the plaintiff filed suit four years after the defendant's product was first sold. On the other hand, Sutton filed its Complaint within mere months of Nature's Best being sold. Compl. ¶ 1. Second, the court in *Petro Stopping* weighed factor seven on the merits of the evidence, not on a motion of summary judgment. Thus, the "de minimis" rule set forth in *Petro*

Stopping does not overcome Fourth Circuit precedent that, at summary judgment, any anecdotal evidence of consumer confusion creates a genuine dispute of material fact.

Further, a reasonable inference regarding a decrease in sales suggests further confusion took place, and at summary judgment reasonable inferences must be drawn in favor of the plaintiff. The record shows that Nature's Choice's actual sales were off from what Sutton had projected for December. Marsh Dep. 8:12–16. Given that PerforMax brought Nature's Best to market in December, the dog food market as a whole continued to grow, and Sutton experienced no unusual supply chain issues, a reasonable jury could infer consumer confusion led to the unexpected decrease in sales. *Id.* Therefore, when considering the evidence of actual confusion in the light most favorable to Sutton, factor seven is in genuine dispute and warrants denial of summary judgment.

H. Factor eight: The quality of Nature's Best is either irrelevant because the product more expensive, or indicative of an intent to generate undeserved sales because pandemic consumers are willing to spend more on dog food.

The relevance of quality in this case is in genuine dispute. The quality of the defendant's product is important when it shows the defendant intended to generate "undeserved sales." *Sara Lee*, 81 F.3d at 467. The Fourth Circuit has held this factor is most relevant when the defendant has produced a "cheap imitation" of the plaintiff's product. *Id.*; *Valador, Inc. v. HTC Corporation*, 241 F. Supp. 3d 650, 670 (E.D. Va. 2017) (citing *George & Co.*, 575 F.3d at 399).

A jury could find the premium ingredients and higher price of Nature's Best is relevant because Petco displays such products in a separate, more prominent part of the store than products like Nature's Choice. Scherago Aff. ¶ 6. PerforMax admits consumers have increased their online spending, "health aware[ness]," and willingness to spend on dog food during the pandemic. Lee Dep. 17:13–16. Sutton likewise acknowledges that consumers are "numb to

sticker shock" in light of current inflation. Marsh Dep. 5:20–22. Taken together, a reasonable jury could infer that consumers who are numb to price are more likely to mistakenly purchase Nature's Best, especially when prominently displayed by Petco. Thus, drawing reasonable inferences in favor of Sutton, a jury could find the quality of Nature's Best underlies PerforMax's intent to generate undeserved sales.

I. Factor nine: Consumer sophistication is irrelevant in this case because dog food is purchased by ordinary consumers of the general public.

The consuming public in this case is not sophisticated. Courts have held that consumers of pet goods are likely to be confused when the products are inexpensive and require no more than ordinary care to purchase. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053 (Fed. Cir. 2012); *see also Bath & Body Works Brand Mgmt., Inc. v. Summit Ent., LLC*, 7 F. Supp. 3d 385, 398 (S.D.N.Y. 2014) (finding the price of the product and whether a consumer is "subject to impulse" are relevant to consumer sophistication).

While some of PerforMax's consumers may elect to take more than ordinary care in buying dog food, they are still purchasing a product that requires no more than ordinary care. As evidenced by Ms. De La Hoya, consumers of both Nature's Best and Nature's Choice may buy their dog food on impulse. De La Hoya Aff. ¶ 6. Thus, consumers of dog food are ordinary and factor nine is not relevant to this case.

J. Weighing all nine factors, summary judgment should be denied because a reasonable jury could find PerforMax created a likelihood of confusion.

Based on the facts discussed above, a reasonable jury could find PerforMax created a likelihood of confusion between Nature's Best and Nature's Choice. Sutton's mark is strong (factor one) because the USPTO did not require proof of secondary meaning, and because Sutton has continually used the Nature's Choice mark since 1995 with substantial sales and advertising

expenditures. The marks are similar (factor two) because they use the same dominant term, incorporate a similar design, and the words are synonymous. Additionally, Nature's Best and Nature's Choice are indisputably similar goods (factor three) because both products are dry adult dog food. Likewise, Sutton and PerforMax use similar facilities (factor four) because the target markets overlap. Further, Sutton and PerforMax both use similar advertising (factor five) because the marks are advertised online and in print to a national audience. Intent (factor six) could favor Sutton because PerforMax had knowledge of Sutton's mark, the potential for consumer confusion, and ignored Sutton's cease-and-desist letter. Actual confusion (factor seven) favors Sutton because a consumer was confused within a week of PerforMax's product being brought to market, and a reasonable inference regarding decreased sales suggests further confusion took place. Quality of PerforMax's product (factor eight) may favor Sutton because the price and ingredients of Nature's Best gives it more prominent placement in Petco. Finally, consumer sophistication (factor nine) is irrelevant to this case because ordinary consumers purchase dog food on impulse.

A jury could find in favor of Sutton, particularly on the strength of Sutton's mark, PerforMax's intent to confuse consumers, and actual consumer confusion. Because the Fourth Circuit places the weight of trademark infringement on the foregoing three factors, a reasonable jury could conclude PerforMax has infringed on Sutton's trademark by producing a likelihood of confusion among consumers. For the above reasons, summary judgment should be denied.

Conclusion

Pursuant to Federal Rule of Civil Procedure 56(a), summary judgment should be denied because a reasonable jury could find in Sutton's favor on strength of mark, intent, and actual confusion. The USPTO's judgment provides Sutton with prima facie strength of mark, while

PerforMax's continued use of Nature's Best in the face of a cease-and-desist letter shows its intent to confuse consumers and profit from Sutton's reputation. Therefore, the defendant's motion for summary judgment should be denied.

Dated: April 24, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April 2022, I served a true and correct copy of the foregoing Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment upon the following counsel for defendant, as follows:

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June 8, 2023

The Honorable Jamar Walker
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Judge Walker:

I am a recent graduate of Columbia Law School, and I write to apply for a clerkship in your chambers beginning August 2024 or any later term thereafter.

During my time at Columbia Law School, I have developed my research and writing skills both inside and outside the classroom. Through an externship with the NAACP Legal Defense & Education Fund, I gained exposure to litigation at both the district and appellate level by researching complex legal issues and drafting documents used in litigation. I have continued to develop these skills as a research assistant, academic coach, and student editor for the Foundation Moot Court Legal Practice Workshop. As the Executive Articles Editor of the *Columbia Human Rights Law Review*, I led a team of editors to select articles for publication. The skills I have developed in these roles, including my ability to work efficiently under pressure, will serve as an asset to chambers.

I know that a clerkship is an opportunity to find mentorship while developing my legal skills. As a woman of color, and the first in my family to attend law school, I did not grow up around lawyers. In fact, I would not have seen myself in the profession if not for strong mentors encouraging me to pursue a career in law. As I have navigated law school, I have made every effort to push for inclusivity in the field, form helping lead non-profits dedicated to supporting students from underrepresented groups to serving as the Mentorship Chair for Empowering Women of Color (EWOC) at the law school. Given your background and experiences, it would be an honor to serve as your clerk.

Enclosed please find a resume, transcript, and a writing sample. Following separately are letters of recommendation from Professors Gillian Metzger (646-530-0640, gmetzg1@law.columbia.edu), Benjamin Liebman (212-854-0678, bl2075@columbia.edu), and Robin Effron (718-780-7933, rje2104@columbia.edu). Thank you for your consideration. Should you need any additional information, please do not hesitate to contact me.

Respectfully,
Meenu Mathews

MEENU MATHEWS

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EDUCATION

Columbia Law School, New York, NY
J.D., expected May 2023

Honors:	James Kent Scholar; Harlan Fiske Stone Scholar
Activities:	*Columbia Human Rights Law Review*, Executive Articles Editor
	Teaching Fellow (Prof. Benjamin Liebman, Torts, Fall 2021)
	Student Editor (Legal Practice Workshop, Spring 2023)
	Academic Coach (Civil Procedure, Constitutional Law, Torts)
	Columbia Clerkships Diversity Initiative
	Empowering Women of Color, Membership Chair
	Co-Director, Law School Mastery Pipeline Program

The George Washington University, Washington, DC
B.A., *summa cum laude*, International Affairs, received May 2018

Honors:	Student Commencement Speaker
	Presidential & Honors Scholar
Internships:	The White House, Office of Public Engagement, Summer 2016
	CNN, The Lead With Jake Tapper; Programming & Content Strategy, Summer & Fall 2017
	Administrative Office of the U.S. Courts; Hiring & Special Programs, Summer 2015
	New Jersey Courts, Middlesex County Court Presiding Judge Jamie Happas, Summer 2018
Activities:	Student Association, Vice President of Public Affairs
	Mock Trial
Study Abroad:	London School of Economics, London, UK, Fall 2016–Spring 2017

EXPERIENCE

Davis, Polk, & Wardwell, New York, NY — New York, NY
Summer Associate (offer extended) — May 2022-August 2022
Drafted court documents and correspondence with opposing counsel in three complex litigation and restructuring matters. Drafted witness memos and researched legal issues related to ongoing government investigations.

NAACP Legal Defense & Educational Fund — New York, NY
Extern — September 2021-May 2022
Drafted portion Ninth Circuit brief on client's 1983 claims. Assessed merits of bringing Fourteenth Amendment and *Monell* claims to support ongoing investigations into bias-related incidents by law enforcement agencies. Researched and evaluated potential expert witnesses for ongoing appellate litigation.

Department of Justice, Washington, DC
Legal Intern, Civil Rights Division — July 2021–August 2021
Drafted four memoranda related to ongoing policy projects related to civil rights, including anti-protest legislation and recent hate crimes legislation. Researched federal government's actions related to artificial intelligence in housing. Prepared a presentation for the Criminal Section regarding gender-based hate crimes.

White & Case LLP, Washington, DC
1L Summer Associate (touchback completed in August 2022; offer extended) — May 2021–July 2021

Sard Verbinnen & Co., New York, NY
Associate, Junior Associate — September 2018–August 2020
Advised 35 public and private companies on corporate crises, reputational risk, and public relations.

LANGUAGES: Malayalam (fluent), French (intermediate)
INTERESTS: *New York Times* crossword, yoga, cooking global cuisine, listening to NPR podcasts